TEXAS REGISTER

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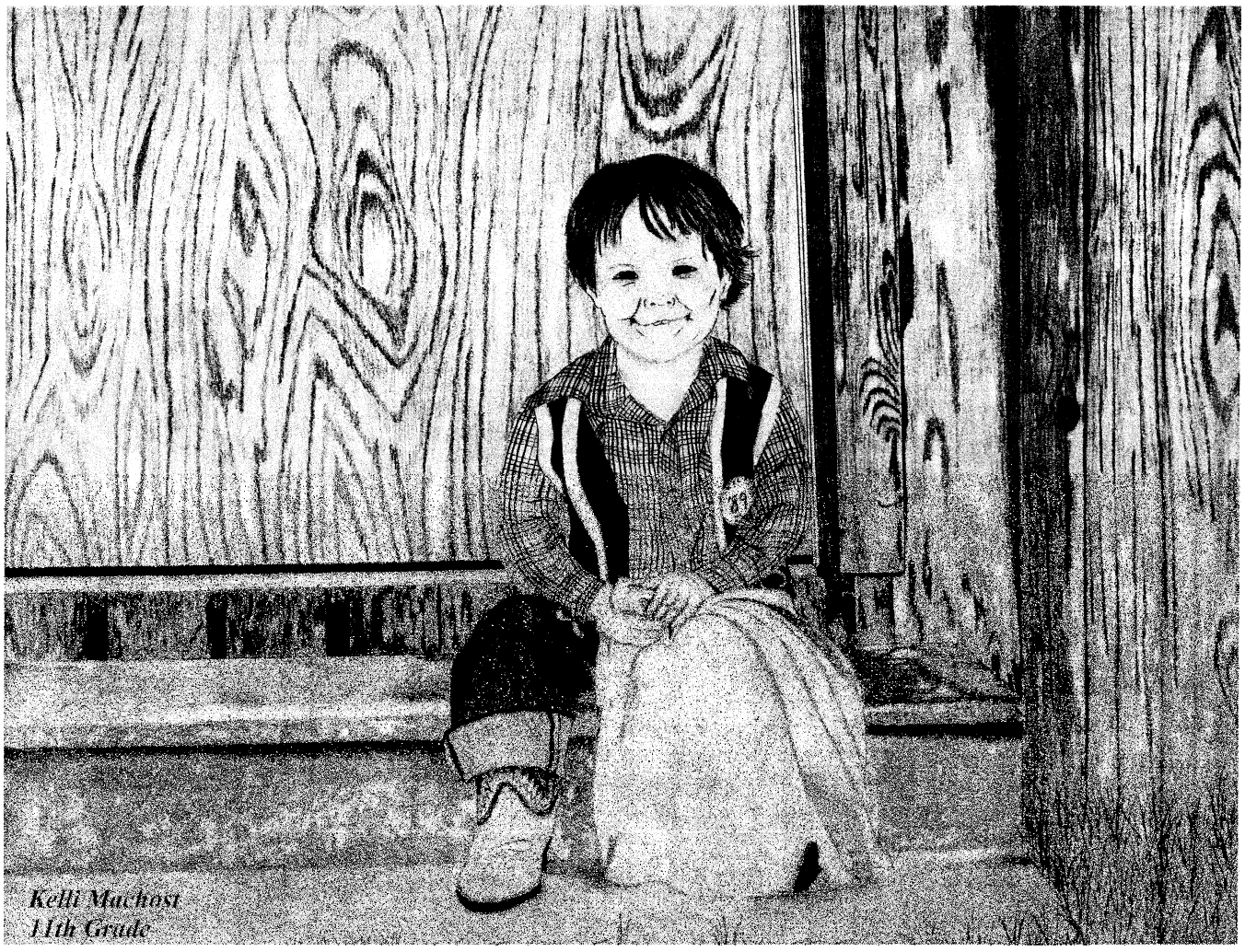

Kelli Machost
11th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for June 26, 2006

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Senator Florence Shapiro of Plano.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Representative Brian McCall of Plano.

Appointed to the Governor's Criminal Justice Advisory Council, pursuant to Executive Order RP41, for a term to expire at the pleasure of the Governor, Representative Jim McReynolds of Lufkin.

Appointed to the Deep East Texas Regional Review Committee for a term to expire January 1, 2008, Martin Nash, Tyler County Commissioner of Woodville (replacing Allen Sumner).

Appointed to the Deep East Texas Regional Review Committee for a term to expire January 1, 2008, Truman Ray Dougharty, Newton County Judge of Newton (replacing Charles Glover).

Appointed to the Deep East Texas Regional Review Committee for a term to expire January 1, 2008, Willie E. Kitchen, Houston County Commissioner of Crockett (replacing R. C. Von Doenhoff).

Appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31 , 2011, Raymond J. Graham of El Paso (replacing Claire Smith of Dallas whose term expired).

Appointed to the Texas Mutual Insurance Company Board of Directors for a term to expire July 1, 2011, Delia M. Reyes of Dallas (replacing George Wesch of New Braunfels whose term expired).

Appointed to the Lavaca-Navidad River Authority for a term to expire May 1, 2011, David Martin Muegge of Edna (replacing Willard Ulbricht of Edna whose term expired).

Appointed to the Lavaca-Navidad River Authority for a term to expire May 1, 2011, Kay W. Simons of Edna (replacing Robert Myers of Edna whose term expired).

Appointed to the Lavaca-Navidad River Authority for a term to expire May 1, 2011, Paul Koop Littlefield of Edna (replacing Sharla Vee Strauss of LaWard whose term expired).

Rick Perry, Governor

TRD-200603477

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0500-GA

Requestor:

Shirley J. Neeley, Ed.D.

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Financing mechanisms by which school districts may enter into lease-purchase agreements (Request No. 0500-GA)

Briefs requested by July 24, 2006

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200603467
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 27, 2006

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Opinions

Opinion No. GA-0439

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a city building official may rely on a professional engineer's seal and certification that a plat or plan complies with the city's building codes (RQ-0426-GA)

S U M M A R Y

Section 1001.402, Occupations Code, does not create rights and obligations regarding a building official's duties that are imposed by other laws, including city ordinances. Under section 1001.402, a building official may accept a plat or plan only if it is sealed by a professional engineer but may "rely" on a professional engineer's seal only for the representations that the plat or plan was prepared by a professional engineer who endeavored to comply with all federal, state, and local requirements.

Opinion No. GA-0440

Mr. Michael W. Behrens, P.E.

Executive Director

Texas Department of Transportation

125 East 11th Street

Austin, Texas 78701-2483

Re: Installation of cameras on state highway rights-of-way to enforce compliance with traffic-control signals (RQ-0427-GA)

S U M M A R Y

The Texas Department of Transportation may install cameras on state highway rights-of-way to monitor compliance with traffic-control signals for the purpose of enforcing traffic laws on state highways. The department may also permit local authorities to install camera equipment in connection with traffic-control signals on state highway rights-of-way for the same purpose.

Opinion No. GA-0441

The Honorable Kip Averitt

Chair, Committee on Natural Resources

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of a municipality to lease its oil, gas and mineral property and the terms under which it may do so (RQ-0432-GA)

S U M M A R Y

With regard to a municipality's lease of its mineral property, subchapter A of chapter 71 of the Natural Resources Code irreconcilably conflicts with section 253.005 of the Local Government Code; and as a result, section 253.005, being the more specific enactment, prevails.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200603450
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 27, 2006

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER B. COMPENSATION

34 TAC §25.21

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS or the system) adopts on an emergency basis amendments to §25.21 concerning compensation subject to deposit and credit. The amended rule provides guidance to public school employers regarding the appropriate reporting of compensation and the appropriate application of contribution rates to compensation. The amended rule is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows TRS to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on fewer than 30 days' notice. The amendments are also adopted in accordance with §2001.006 of the Government Code, which allows TRS to adopt rules and take other administrative action in preparation for the implementation of legislation that has become law but has not taken effect in application. The amended section as proposed for permanent adoption will be published in another issue of the *Texas Register*.

The emergency amendments to the rule allow TRS to implement, in a manner consistent with plan qualification requirements, House Bill 1, 79th Legislature, Third Called Session (2006) (House Bill 1), which amends §822.201, Government Code. House Bill 1 became law immediately, to be applied beginning with the 2006 - 2007 school year. The amended rule is adopted on an emergency basis to enable TRS to continue to operate as a qualified retirement plan and to provide communications that are necessary and appropriate to ensure proper compensation reporting as TRS members report for work in the 2006 - 2007 school year, with some employees reporting to work as early as July 2006. Further, the amended rule is adopted on an emergency basis to provide employers and members affected by House Bill 1 necessary, appropriate, and timely guidance to use in making informed budget, programming, and other decisions before the start of the 2006 - 2007 school year, which is imminent.

House Bill 1 amends Chapter 22, Subchapter D, Education Code to create a new "health care supplementation" election to replace the existing compensation supplementation program. House Bill 1 requires eligible active employees to elect in writing, each school year, whether to designate a portion of the employee's compensation to be used as health care supplementation. House Bill 1 amends the TRS plan provision of §822.201(c)(10), Government Code to provide that any compensation designated as health care supplementation is excluded from salary and wages for TRS purposes, subject to an annual limit of $1,000. It is the policy of the State of Texas, as expressed in §825.506, Government Code that the provisions of the TRS retirement benefit plan be construed and administered in a manner that the retirement system's benefit plan will be considered a qualified plan under §401(a) of the Internal Revenue Code of 1986 (26 U.S.C. §401). Section 825.506, Government Code authorizes the Board to adopt rules that modify the retirement plan to the extent necessary for the retirement system to be a qualified plan and provides that the rules adopted by the Board are to be considered part of the plan.

In enacting House Bill 1, the legislature expressed its intent that TRS take whatever action necessary under §825.506 so that the TRS retirement benefit plan remains a qualified plan under the Internal Revenue Service Code. H.J. OF TEX., 79th Leg., 3d C.S. 331 (2006) (statement of legislative intent by Representative Chisum and Representative Eiland).

The emergency amendments to §25.21 are reasonable modifications to the extent necessary for the plan to be a qualified plan. TRS contributions will be required on any amounts designated for the health care supplement as specified under House Bill 1, thereby eliminating an employee's ability to individually elect varying amounts to contribute to the TRS plan. The amendments also protect the employer pickup of TRS member contributions as established under §825.409, Government Code, which provides, in conformity with the Internal Revenue Code, that employees do not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

In addition, the rule amendments conform §25.21 to the language House Bill 1 uses in amending §822.201(c)(11), Government Code to distinguish the superseded compensation supplementation program from the new health care supplementation program created under House Bill 1.

Statutory Authority: In addition to §2001.006 and §2001.034, Government Code, as described above, the amended section is adopted on an emergency basis under the following: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system; §825.506(a), Government Code, which authorizes the Board to adopt rules that modify the TRS's retirement benefit plan to the extent necessary for the retirement system to be a qualified plan and states that the rules adopted by the Board are to be considered part of the plan.

Cross-reference to Statute: House Bill 1, 79th Legislature, Third Called Session (2006), which amends Chapter 22, Subchapter D, Education Code, relating to compensation supplementation for school district employees, and §822.201, Government Code, relating to TRS member compensation; and §825.506, Govern-

ment Code, which requires that the provisions of the TRS retirement plan be construed and administered in a manner that the retirement system's benefit plan will be considered a qualified plan under §401(a) of the Internal Revenue Code of 1986 (26 U.S.C. §401).

§25.21. Compensation Subject to Deposit and Credit.

(a) - (b) (No change.)

(c) The following types of monetary compensation are to be included in annual compensation:

(1) - (6) (No change.)

(7) a merit salary increase made under Education Code, §51.962; [~~and~~]

(8) amounts deducted from regular pay for a qualified transportation benefit under Government Code §659.202; and[~~.~~]

(9) compensation designated as health care supplementation by an employee under Subchapter D, Chapter 22, Education Code, as amended by House Bill 1, 79th Legislature, Third Called Session. This paragraph modifies the provision of the retirement plan described in §822.201, Government Code, as amended by House Bill 1, 79th Legislature, Third Called Session, to the extent necessary for the retirement system to be a qualified plan.

(d) The following are excluded from annual compensation:

(1) - (9) (No change.)

(10) active employee health coverage or compensation supplementation or any other amount received by an employee under former Article 3.50-8, Insurance Code; former Chapter 1580, Insurance Code; Subchapter D, Chapter 22, Education Code, as that subchapter existed on January 1, 2006; or Rider 9, page III-39, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act), regardless of whether the employee receives the amount in cash, uses it for payment of health care coverage, or uses it for any other option available by law;

(11) - (12) (No change.)

(e) - (f) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2006.

TRD-200603386
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective Date: June 20, 2006
Expiration Date: October 17, 2006
For further information, please call: (512) 542-6438

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 61. COMMERCIAL FEED RULES

SUBCHAPTER H. ADULTERANTS

4 TAC §61.61

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes amendments to Texas Administrative Code, Title 4, Part 3, Commercial Feed Rules, §61.61, concerning Poisonous or Deleterious Substances in subsection (a)(6) and (7). The amendment aligns the Office of the Texas State Chemist's policy guidelines with those published by the Food and Drug Administration (FDA).

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, concludes that for the first five-year period there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Dr. Herrman has also concluded that the public benefit as a result of enforcing this amended rule will be to align Office of the Texas State Chemist policy with FDA action levels and guidance documents, clarify blending authority, and provide guidance to grain handlers, processors, farmers and risk management institutions pertaining to the disposing of the disposal of rain containing >500 parts per billion (ppb) and oilseed, processed grain, and oilseed meal containing >300 contaminated feed ingredients that exceed 500 parts per billion (ppb) aflatoxin. There is an anticipated cost to small businesses of $15.90 per acre to dispose of grain using chopping and disking. The Office identified that 1.3% of the 2005 crop (based on a state-wide survey) would incur this cost.

Comments to the proposal may be submitted to Dr. Herrman by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160; by fax at (979) 845-1389 or by e-mail at tjh@otsc.tamu.edu.

The amendments are proposed under Texas Agriculture Code Chapter 141, §141.004 which provides Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist with the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code Chapter 141 of the Texas Commercial Feed Control Act, Subchapter A, §141.002 is affected by the proposed amendments.

§61.61. Poisonous or Deleterious Substances.

(a) Poisonous or deleterious substances include, but are not limited to, the following:

(1) - (5) (No change.)

(6) grain, oilseeds, processed grain and oilseed meals containing aflatoxin B1, B2, G1, G2 above 20 parts per billion (ppb) individually or total except that with proper labeling as approved by the Office of the Texas State Chemist as follows: ≤50 ppb [~~Service less than 50ppb~~] may be distributed when destined for wildlife; ≤100 ppb [~~less than 100ppb~~] may be distributed when destined for breeding cattle and breeding goats not used in production of milk for human consumption, breeding swine, mature poultry, and sheep; ≤200 ppb [~~less than 200ppb~~] may be distributed when destined for finishing swine (more than 100 lbs. body weight); ≤300 ppb [~~less than 300ppb~~] may be distributed when destined for finishing feed lot [~~feedlot~~] cattle in confinement; grain containing >300 to ≤500 ppb requires a blending permit issued by the Office of the Texas State Chemist; aflatoxin >500 ppb in grain and >300 ppb in oilseed, processed grain, and oilseed meal may not enter commerce and a record of disposition shall a disposal plan must be submitted to the Office of the Texas State Chemist;

(7) grain, oilseeds, processed grain, and oilseed meal containing fumonisin above 5 parts per million (ppm) except that with proper labeling as approved by the Office of the Texas State Chemist and targeted for animal species as follows: ≤20 ppm for swine and catfish not to exceed 50% of diet; ≤30 ppm for breeding ruminants, breeding poultry and breeding mink not to exceed 50% of diet; ≤60 ppm for ruminants >3 months old being raised for slaughter, and mink being raised for pelt production not to exceed 50% of diet; ≤100 ppm for poultry being raised for slaughter not to exceed 50% of diet; all other species or classes of livestock and pet animals ≤10 ppm not to exceed 50% of diet except equids and rabbits which should not exceed 5 ppm and 20% of diet; >100 ppm requires a blending permit issued by the Office of the Texas State Chemist [~~Service less than 15ppm may be distributed when destined for finishing swine (more than 100 lbs. body weight); less than 50ppm may be distributed when destined for feedlot cattle~~].

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2006.

TRD-200603374

Dr. Tim Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Earliest possible date of adoption: August 6, 2006

For further information, please call: (979) 845-1121

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 139. ENFORCEMENT

SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers proposes an amendment to §139.35, relating to Sanctions and Penalties. The proposed amendment will clarify the sanctions associated with rule modifications made to §137.57 and §137.63 by adding suggested sanctions for care and diligence and misrepresentation by being misleading.

The proposed rule change adds a suggested sanction for failure to exercise care and diligence in the practice of engineering and a suggested sanction to the misrepresentation of issuing an oral or written assertion in the practice of engineering that are misleading.

C.W. Clark, P.E., Director of Compliance and Enforcement for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Clark has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the amendment as proposed. There is no effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated is that a clarification of the rule is made and recommended sanctions are clearly reflected for each violation.

Comments may be submitted no later than 30 days after the publication of this notice to C.W. Clark, P.E., Director of Compliance and Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-5715.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§139.35. Sanctions and Penalties.

(a) (No change.)

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules:

Figure: 22 TAC §139.35(b)

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2006.

TRD-200603388
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 440-7723

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE

22 TAC §533.34, §533.35

The Texas Real Estate Commission (TREC) proposes amendments to §533.34, concerning Disapproval of an Application for a License or Registration and §533.35, concerning Revocation or Other Action against a License or Registration. The amendment to §533.34 clarifies that notice of disapproval will not be provided to a sponsoring broker of an applicant for a salesperson license as such licenses are issued as inactive with no sponsoring broker. The amendment to §533.35 clarifies that a hearing concerning a revocation or other disciplinary action against a licensee will be held at a time and place designated by the Commission except in cases involving a violation of §1101.652(a)(3) or (b), Texas Occupations Code. In those cases, the hearing shall be held pursuant to §1101.657(d) if the licensee requests. The amendments are proposed in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules to be consistent with Chapter 1101, Occupations Code, and recent revisions thereto.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state as a result of enforcing or administering the amended sections. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amended sections.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended sections will be consistency with the underlying statutory authority for the rule. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§533.34. Disapproval of an Application for a License or Registration.

Notice and hearings relating to disapproval of an application for a license or registration issued by the Texas Real Estate Commission are governed by the statute under which the application was filed and by the Administrative Procedure Act, Texas Government Code, §§2001.001 et seq. The commission also will notify a [~~sponsoring broker or~~] sponsoring inspector of the disapproval, but a sponsoring broker or sponsoring inspector is not required to request a hearing or to be named or admitted as a party in the proceeding before the commission. A hearing pursuant to this section will be held at a place designated by the commission. Failure to request a hearing timely waives the right to judicial appeal, and the determination becomes final and unappealable.

§533.35. Revocation or Other Action against a License or Registration.

A license or registration issued by the Texas Real Estate Commission may not be revoked or other action taken against the license or registration except after notice and opportunity for hearing pursuant to statutory obligation and these sections. If a real estate salesperson is a respondent, the commission also will notify the salesperson's sponsoring broker of the hearing. If an apprentice inspector or real estate inspector is a respondent, the commission also will notify the sponsoring professional inspector of the hearing. The hearing will be held at a time and place designated by the commission, except as provided by §1101.657, Texas Occupations Code, for a violation of §1101.652(a)(3) or (b) Pursuant to §1101.657, [~~that~~] upon the written request of a respondent licensed as a Texas real estate broker or[~~,~~] real estate salesperson[~~, or inspector, or registered as an easement or right-of-way agent,~~] filed within five days after receipt of the notice of hearing, the hearing will be held in the county where the principal place of business of the respondent is maintained. If the respondent is a licensee or registrant who does not reside within this state, the hearing may be held in any county within this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2006.

TRD-200603376
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 465-3900

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CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

22 TAC §§543.3, 543.4, 543.12

The Texas Real Estate Commission (TREC) proposes amendments to §543.3, concerning Fees, §543.4, concerning Forms, and proposes new §543.12, concerning Renewal of Registration. The amendments and new rule are proposed to implement revisions to the Texas Timeshare Act, Chapter 221, Texas Property Code enacted during the 79th Legislative Session, Regular Session, by House Bill 1045. The amendments provide for renewal requirements for registered timeshare properties, including a renewal form, and renewal fees. The amendments also propose to amend the Abbreviated Registration of a Timeshare Plan to request additional information from the developer about the jurisdiction in which the plan is already registered and to fix some typographical errors in the form.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments and new section are in effect there will be no fiscal implications for the state as a result of enforcing or administering the amendments and new section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amendments and new section.

Ms. DeHay also has determined that for each year of the first five years the amendments and new section as proposed are in effect the public benefit anticipated as a result of enforcing the amendments and new section will be clarification of the renewal requirements for registered timeshare properties. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments and new section are proposed under the Texas Property Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

The statute which is affected by this proposal is the Texas Property Code, Chapter 221. No other statute, code or article is affected by the proposed amendments and new rule.

§543.3. Fees.

(a) - (d) (No change.)

(e) A developer of a registered timeshare plan shall pay a fee of $100 to renew a registration.

(f) To reinstate an expired registration of the timeshare plan, a developer shall pay, in addition to the fee of $100 to renew a timeshare plan, an additional fee of $25 for each month the registration has been expired.

§543.4. Forms.

(a) - (b) (No change.)

(c) The Texas Real Estate Commission adopts by reference Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-1 [~~3-0~~], approved by the commission in 2006 [~~2005~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(d) - (g) (No change.)

(h) The Texas Real Estate Commission adopts by reference Application to Renew the Registration of a Timeshare Plan, Form TSR 8-0, approved by the Commission in 2006. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(i) [~~(h)~~] Applicants may reproduce the forms adopted by the commission from printed copies and by computer. With the exception of the changes to the forms which are permitted by this section, the applicant shall reproduce the text of the forms verbatim and the spacing,

length of blanks, fonts and placement of text on the page must appear to be substantially similar to that used by the commission in the printed version of the form.

(j) [~~(i)~~] When using the forms, the applicant must comply with the following:

(1) The applicant may select the type and size of the fonts, provided the fonts are no smaller than those used in the printed version of the form adopted by the commission.

(2) The forms must be printed on letter sized ("8 1/2 by 11") paper.

(3) Whether a form is reproduced by computer or is preprinted by the applicant, the applicant may allocate such space for narrative responses where noted as the applicant deems necessary or may attach additional pages containing narrative responses to the application.

(4) The applicant may renumber the pages of a form to correspond with any changes made necessary due to adjusting the space for narrative responses.

(5) The applicant may not alter the text of a promulgated application form.

§543.12. Renewal of Registration.

(a) If a timeshare plan was registered prior to January 15, 2006, the registration expires on the last day of the month 24 months after its last anniversary date prior to January 15, 2006. For timeshare plans registered on or after January 15, 2006, the registration expires on the last day of the month 24 months after the date the plan was registered.

(b) A developer of a timeshare plan may renew the registration for a 2-year period by completing an Application to Renew the Registration of a Timeshare Plan, Form TSR 8-0, and paying the appropriate filing fee.

(c) Three months prior to the expiration of a registration, the commission shall mail a renewal application form to the developer's last known permanent mail address as shown in the commission's computerized records.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2006.

TRD-200603377
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER D. NEWBORN SCREENING PROGRAM

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§37.51 - 37.67, and new §§37.51 - 37.65, concerning the Newborn Screening Program.

BACKGROUND AND PURPOSE

The repeal and new sections are necessary to comply with House Bill (HB) 790, 79th Legislature, Regular Session, 2005, codified at Health and Safety Code, §§33.004, 33.011, 33.014, 33.031, 33.032, and 33.034, mandating the expansion of newborn screening in Texas by November 1, 2006. The repeal and new sections are necessary for readability, due to substantial editing.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.51 - 37.67 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. However, §37.63, relating to Calculation of Financial Participation Obligation, is being repealed because it will be addressed in program policy. Also, §37.67, relating to Nondiscrimination Statement, is being repealed as redundant, because federal and state law, as well as department policy, already specifically prohibit discrimination in each of the areas addressed by §37.67.

SECTION-BY-SECTION SUMMARY

New §§37.51 - 37.65 include editorial changes, provide clarification to the rules, add new definitions, and where applicable, change the department name from the legacy name to the new agency name. The new §37.51 changes "Texas Department of Health" to "Department of State Health Services," and adds new language to address abnormal screens. The new §37.52 adds new definitions, clarifies other definitions, and renumbers definitions to appear in alphabetical order. The new §37.53 expands the list of disorders for which newborn screens are required. The new §37.54 changes the terminology "screening tests" to "screens." The new §37.55 clarifies provider and parental responsibilities. The new §37.56 clarifies timelines for collecting and submitting blood specimens. The new §37.57 adds a reference to "the department designee" concerning screening procedures. The new §37.58 clarifies provider and local health department roles in providing follow-up on abnormal screens. The new §37.59 adds language to clarify the roles of the two programs that are addressed: Children With Special Health Care Needs and Newborn Screening Program. The new §§37.60 - 37.62 change language to reflect the specific benefits being addressed for specific populations, eligibility requirements, and the application process. The new §§37.63 - 37.65 concern denial of application, advisory bodies and task forces, and confidentiality of information.

FISCAL NOTE

Jann Melton-Kissel, Section Director, Specialized Health Services, has determined that for each year of the first-five year period the sections are in effect, there will be fiscal implications as a result of administering the rules as proposed. These changes will result in Medicaid costs at the Health and Human Services Commission of $1,347,567 in General Revenue and $2,059,682 federal funds in 2008 and $1,347,567 in General Revenue and $2,059,682 Federal Funds in subsequent years. Revenue from private-pay sources will total $2,725,883 in each year beginning

in 2008. The remaining costs for tests will be paid by the department, totaling $5,259,375 in 2007 (costs for all tests done in first year for validation and testing purposes) and $879,368 in subsequent years.

There will be no effect on local government.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel has also determined that there are no anticipated costs to small businesses or micro-businesses (other than those that submit specimens for testing) required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons (other than those that submit specimens for testing) who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Melton-Kissel has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is the availability of newborn screens previously unavailable.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to David R. Martinez, Newborn Screening Branch, Mail Code 1918, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§37.51 - 37.67

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Health and Safety Code, §§33.002(b) and 33.032(b), which require the department to adopt rules necessary to carry out the program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapters 33 and 1001; and Government Code, Chapter 531.

§37.51. Purpose.

§37.52. Definitions.

§37.53. Conditions for Which Newborn Screening Tests Are Required.

§37.54. Exemption from Screening.

§37.55. Responsibilities of Persons Attending a Newborn.

§37.56. Blood Specimen Collection for Required Screening Tests.

§37.57. Screening Test Procedures To Be Used.

§37.58. Follow-up and Recordkeeping on Positive Screens.

§37.59. Coordination with Children With Special Health Care Needs Services Program.

§37.60. Scope of Newborn Screening Program Services.

§37.61. Eligibility Requirements.

§37.62. Application Process.

§37.63. Calculation of Financial Participation Obligation.

§37.64. Denial of Application; Modification, Suspension, Termination of Program Services.

§37.65. Advisory Bodies and Task Forces.

§37.66. Confidentiality of Information.

§37.67. Nondiscrimination Statement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 26, 2006.

TRD-200603435
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 458-7111 x6972

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25 TAC §§37.51 - 37.65

STATUTORY AUTHORITY

The proposed new sections are authorized by Health and Safety Code, §§33.002(b) and 33.032(b), which require the department to adopt rules necessary to carry out the program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new sections affect the Health and Safety Code, Chapters 33 and 1001; and Government Code, Chapter 531.

§37.51. Purpose.

These sections describe the Newborn Screening Program administered by the Department of State Health Services. Each newborn delivered in the state must be subjected to two screens for multiple disorders to identify the newborn that may be at risk of having phenylketonuria (PKU), other heritable diseases, or hypothyroidism. Abnormal screens are reported to the newborn's health care practitioner. These sections also identify program services which are available to individuals who have a confirmed diagnosis of a heritable disease or hypothyroidism and establish eligibility criteria, financial participation requirements and procedures for the orderly provision of the identified services to eligible individuals.

§37.52. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) 21-hydroxylase deficiency--An inherited disorder, which if not treated, may lead to serious illness and death.

(2) Amino acid disorder--An inherited disorder, which if not treated, may cause mental retardation or death.

(3) Biotidinase deficiency--An inherited disorder, which if not treated, may cause mental retardation, hearing loss, poor muscle control, or death.

(4) Bona fide resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care, with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent, managing conservator, or guardian is a bona fide resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a bona fide resident; or

(iii) is an adult residing in Texas, including an adult whose parent, managing conservator, or guardian is a bona fide resident or who is his/her own guardian.

(5) Commissioner--The commissioner of the Department of State Health Services or his successor.

(6) Department--The Department of State Health Services or its successor.

(7) Diagnostic test--A medical evaluation to confirm results of a screen.

(8) Fatty acid oxidation disorder--An inherited disorder, which if not treated, may cause mental retardation or death.

(9) Galactose-1-phosphate uridyltransferase deficiency--An inherited disorder, which if not treated, may cause fatal infection or mental retardation.

(10) Health care practitioner--A registered nurse recognized as an advanced practice nurse by the Board of Nurse Examiners, a physician assistant licensed by the Texas State Board of Physician Assistant Examiners, a midwife who has met licensing requirements and standards of the Texas Midwifery Board, or a physician who is licensed by the Texas State Board of Medical Examiners.

(11) Heritable disease--An inherited disease that may result in mental or physical retardation or death.

(12) Hypothyroidism--A disorder, which if not treated, leads to mental and physical retardation.

(13) Newborn--A child through 30 days of age.

(14) Newborn screen--One or more tests to identify a newborn who may be at risk of having phenylketonuria, other heritable diseases, or hypothyroidism.

(15) Organic acidemia--An inherited disorder, which if not treated, may cause mental retardation or death.

(16) Physician--A person licensed to practice medicine by the Texas State Board of Medical Examiners.

(17) Provider--The hospital, birthing facility, health care practitioner, midwife, clinic, or laboratory that collects and submits the newborn screen blood specimen.

(18) Satisfactory specimen--A blood specimen obtained by uniform absorption of capillary blood onto a filter paper target such that the target is completely filled with blood and soaked through from back to front of the paper. The blood specimen must be completely dry before shipping and be submitted with the accurate and fully completed demographic information sheet.

(19) Screen--One or more tests that identify an increased risk for a disorder, which must be confirmed by diagnostic tests. A screen may produce false positive or false negative results and should not be relied upon as "diagnostic".

(20) Sickling hemoglobinopathy, including sickle cell anemia, hemoglobin S/C disease, and sickle betathalassemia--An inherited disorder which, if not treated, may cause fatal infection and interrupted blood supply to vital organs.

(21) Specimen collection form--The specimen collection form consists of a patient demographic information sheet (original and carbonless copy) with an attached filter paper collection device.

(22) Specimen collection kits.

(A) Single screen specimen collection kit--a single department-approved bar-coded, quality controlled filter paper collection device, demographic information sheet, and envelope which may be used to submit a newborn's blood specimen for the first or second screen, repeat or follow-up testing.

(B) Two screen specimen collection kit--two connected, department approved bar-coded, quality controlled filter paper collection devices, demographic information sheets and envelopes which allows the first and second screens to be linked. The kit is designed so that the two collection devices are easily separated such that when the first specimen is collected, the remaining collection device and an envelope will be given to the mother to take to the first doctor's visit for collection of the second newborn screening blood specimen.

§37.53. Disorders for Which Newborn Screens Are Required.

Except as permitted in §37.54 of this title (relating to Exemption from Screens), all newborns delivered in Texas shall receive two screens for the following disorders:

(1) galactose-1-phosphate uridyltransferase deficiency;

(2) sickling hemoglobinopathies;

(3) 21-hydroxylase deficiency;

(4) hypothyroidism;

(5) amino acid disorders, including argininosuccinic acidemia, citrullinemia, homocystinuria, maple syrup urine disease, phenylketonuria, and tyrosinemia type I;

(6) fatty acid oxidation disorders, including carnitine uptake defect, long-chain hydroxyacyl-CoA dehydrogenase deficiency, medium-chain acyl-CoA dehydrogenase deficiency, trifunctional protein deficiency, and very-long-chain acyl-CoA dehydrogenase deficiency;

(7) organic acidemias, including 3-methylcrotonyl-CoA carboxylase deficiency, beta-ketothiolase deficiency, glutaric acidemia type I, hydroxymethylglutaric aciduria, isovaleric acidemia, methylmalonic acidemia (Cbl A and Cbl B forms), methylmalonic acidemia (mutase deficiency form), multiple carboxylase deficiency, and propionic acidemia; and

(8) biotinidase deficiency, upon the decision of the Commissioner to include this disorder.

§37.54. Exemption from Screens.

A newborn may not be screened if the parent, managing conservator, or guardian objects to the screens because the screens conflict with the religious tenets or practices of the parent, managing conservator, or guardian.

§37.55. Responsibilities of Providers and Parent, Managing Conservator, or Guardian.

(a) The nonphysician attending the delivery of a newborn or any physician attending a newborn within the first 30 days of life has the primary responsibility for causing the screens to be performed according to these sections and ensuring that a satisfactory blood specimen is submitted to the department or the department's designee on a properly completed specimen collection form obtained from the department. When the baby is an inpatient in the hospital, the hospital shall ensure that the appropriate screens are done. When the baby is not in the hospital, the health care practitioner who attends the newborn outside of the hospital shall be responsible for causing the appropriate screens to be done.

(b) A capillary blood specimen shall be collected by absorbing the blood onto target circles on a filter paper collection device. Other body fluids, or blood from the placenta, umbilical cord, or mother are not acceptable.

(c) Blood specimens must air-dry on a flat surface for at least four hours and must be mailed to the department within 24 hours after collection. Directions for handling blood specimens must be followed to avoid cross-contamination.

(d) The department will determine the method of collection of the second screen. If the department determines the appropriate method of collection is a two-part collection kit, the provider of the first screen shall give the second specimen collection kit to the parent, managing conservator, or guardian with instructions to take the kit to a health care provider for collection of the newborn's second blood specimen at one to two weeks of age.

(e) Providers shall ensure that the identifying and demographic information sheet is complete and accurate when submitted to the department. Identifying information shall include contact information for the newborn's health care practitioner to ensure ability to contact the practitioner in case of an abnormal screen.

§37.56. Blood Specimen Collection for Required Screens.

(a) The blood specimen is to be obtained after 24 hours of age and before 48 hours of age. If the newborn is discharged from the hospital or birthing facility before the above criteria are met, the blood specimen must be obtained immediately prior to discharge. A second blood specimen is to be collected between one and two weeks of age by the newborn's health care practitioner in accordance with §37.55 of this title (relating to Responsibilities of Providers and Parent, Managing Conservator, or Guardian). If program data demonstrate to the agency's satisfaction that the second screen is no longer necessary as a method of detecting false negative results from the first screen, the commissioner may discontinue the requirement for submission of the second screen. The commissioner's decision shall be announced through means deemed appropriate by the commissioner to notify health care practitioners, providers, and other interested persons. Prior to the effective date of the announced change, the agency's newborn screening educational information will be revised to reflect the deletion of the second screen requirement.

(b) A repeat blood specimen, which may or may not be the second screen, shall be obtained as instructed by the Newborn Screening Program to verify results or if the initial blood specimen was unsatisfactory.

(c) Transfusions can cause invalid results. The first screen should be collected prior to the first transfusion if possible. Transfused newborns must be retested two to four weeks following transfusion.

§37.57. Screening Procedures To Be Used.

Analysis of the blood specimens for the required screens must be performed by the department or the department designee. The department or the department designee is responsible for identifying and implementing proper laboratory procedures for the screens required in §37.53 of this title (relating to Disorders for Which Screens Are Required).

(1) The analysis of initial blood specimens and the analysis of the follow-up blood specimens are included in these responsibilities.

(2) The criteria for referring a newborn with an abnormal screen are dependent upon the laboratory procedures employed by the department or the department's designee in performing the analysis of the blood specimens. Therefore, the department is responsible for identifying and implementing the referral criteria based upon the laboratory procedures selected by the department for the analysis.

(3) Upon completion of the laboratory determination by the department, laboratory results shall be mailed to the provider who submitted the blood specimen. The department shall establish a written policy for communicating the laboratory results.

§37.58. Follow-up and Record Keeping on Abnormal Screens.

(a) The department shall maintain an active system of follow-up for suspected cases of each disorder for which screens are required.

(b) Health authorities, public health departments, public health districts, and the department's health service regions may provide follow-up and other needed assistance for individuals at risk from the disorders for which screens are required as requested by the department.

(c) The provider submitting the newborn screening specimen shall assist the department with follow-up of individuals at risk for the disorders listed in §37.53 of this title (relating to Disorders for Which Newborn Screens are Required).

(d) The department will identify pediatric specialists in the state who are available to provide consultation to health care practitioners regarding the diagnosis and management of newborns with abnormal screens. When appropriate, Newborn Screening Program staff shall provide the health care practitioner with the names of consultants in the health care practitioner's geographic area. The program may provide information about the newborn and the abnormal screen to the pediatric specialists who consult with the department.

(e) Health care practitioners shall report to the department all confirmed cases of the disorders for which required screens are performed that have been detected by other mechanisms.

(f) The department will collect epidemiologic data from information in the specimen collection kits and other sources to derive incidence/prevalence rates for the disorders for which screens are required. The data may enable the department to identify high-risk population groups, with the ultimate goal of preventing severe sequelae of the disorders.

(g) The department may follow up with a confirmed case through periodic data collection from the health care practitioner or parent, managing conservator, or guardian.

(h) The department shall maintain a registry of children born in Texas who have been diagnosed as having one of the disorders for which screens are required.

§37.59. Coordination with Children With Special Health Care Needs Program.

(a) All newborns and other individuals under the age of 21 years who have an abnormal screen may be referred, if financially eligible, to the department's Children With Special Health Care Needs (CSHCN) Program.

(b) An individual who is determined to be eligible for CSHCN services shall be given approved services through that program, including special dietary formula, unless access to CSHCN health care benefits is restricted according to §38.16 of this title (relating to Procedures to Address CSHCN Services Program Budget Alignment). An individual who does not meet CSHCN eligibility criteria shall be referred to the Newborn Screening Program for a determination of eligibility for program benefits.

§37.60. Newborn Screening Benefits.

In cooperation with the individual's health care practitioner and within the limits of funds appropriated by the legislature for this purpose, the Newborn Screening Program shall provide dietary supplements, medications, vitamins, confirmatory testing and follow-up care at no cost or reduced cost to individuals approved for program benefits who have a disorder detected through the program, and confirmed with appropriate diagnostic tests, that have been interpreted by a physician recognized by the department as a specialist in metabolic diseases. Dependent on available funding, program benefits will be limited to specific populations of individuals diagnosed with an inheritable disorder included in those screened by the department and whose income is at or below 350% of the federal poverty income guideline. Dependent on available funding, program benefits will be available to the following populations in this order:

(1) children 0-2;

(2) children 3-5;

(3) children 6-21;

(4) pregnant women;

(5) women of child bearing age; and

(6) adults (female or male).

§37.61. Eligibility Requirements.

(a) Except as otherwise provided for in these sections, to be eligible to receive benefits from the Newborn Screening Program, an individual must:

(1) have a confirmed diagnosis of a disorder screened by the program;

(2) be a bona fide resident of the state;

(3) have a family income that is within the financial guidelines set by these sections;

(4) if required, make financial participation payments in a timely manner;

(5) upon request from the program provide updated medical, financial, and residency information and/or documentation; and

(6) have a parent, managing conservator, or guardian agree to abide by the requirements in these sections if the individual is a minor.

(b) An individual is not eligible to receive benefits from the program at no cost or reduced cost to the extent that the individual or the parent, managing conservator, or other person with a legal obligation to support the individual is eligible for some other benefit, such as Medicaid, Children With Special Health Care Needs (CSHCN), Children's Health Insurance Plan (CHIP) or private insurance, that would pay for all or part of the services.

§37.62. Application Process.

(a) To be considered for newborn screening benefits, a complete application for admission to the program must be filed annually with the program by mailing to the following address: Newborn Screening Program, Health Screening and Case Management Unit, Mail Code 1918, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(b) The application must be signed by one of the following as appropriate:

(1) an adult individual seeking services;

(2) the parent, managing conservator, or guardian of a minor; or

(3) the guardian of an adult under a temporary, limited or general guardianship.

(c) An application signed with a mark must be attested to before a notary public.

(d) A complete application for newborn screening benefits shall consist of the following:

(1) a properly completed and signed application form;

(2) a statement from the individual or, if the individual is a minor, from the individual's parent, managing conservator, or guardian that the individual is a bona fide resident of the state and if requested by the Newborn Screening Program, documentation of residency status, and proof of income as established in the Newborn Screening Program policy; and

(3) information on any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(e) An application shall be deemed incomplete for any one of the following reasons:

(1) failure to provide all information requested in the application form;

(2) lack of supporting documents;

(3) failure to provide documentary evidence requested by the program, including documentation to verify residency or financial data; or

(4) lack of, or improper signatures.

(f) An application will be reviewed and will be:

(1) denied if eligibility requirements are not met;

(2) returned, if incomplete, with the deficiencies noted to the individual or if the individual is a minor or a ward, to the individual's parent(s), managing conservator(s), or guardian as is appropriate, for completion and resubmission; or

(3) approved if all criteria are met.

(g) An individual's eligibility date shall be considered to be the date on which the program determines that the application is substantially complete.

§37.63. Denial of Application; Modification, Suspension, Termination of Program Benefits.

(a) An individual applying for or receiving benefits from the Newborn Screening Program may have his/her application denied or his/her benefits modified, suspended, or terminated for any of the following reasons.

(1) Benefits may be denied, modified, suspended, or terminated if:

(A) the individual does not have a confirmed diagnosis of a disorder for which program benefits are available;

(B) the individual is not a bona fide resident of the state;

(C) the individual fails or refuses to provide the periodic information regarding residency and financial status when requested by the program.

(2) Benefits may be denied, modified, suspended, or terminated if:

(A) the individual submits an application form or any document required in support of the application or continued participation in the program which contains an intentional misstatement of fact which is material to the program's determination that the individual is eligible for program benefits; or

(B) program funds are curtailed.

(b) An individual applying for or receiving benefits from the Newborn Screening Program may not appeal or request an administrative hearing concerning adjustments made by the program in poverty income guidelines to conform to federal poverty income guidelines or adjustments in the type and amount of program benefits available when such adjustments are necessary to conform to budgetary limitations.

(1) An individual applying for program benefits will be notified in writing if their application has been denied. The notification will outline the reasons for denial.

(2) An individual receiving newborn screening benefits will be notified if the benefits are to be modified, suspended, or terminated. Notification will be by certified mail to the most recent address known to the program.

(3) Within 30 days after receiving notice as specified in paragraph (2) of this subsection, the individual, or if the individual is a minor, the individual's parent, managing conservator, or guardian, may appeal the program's decision to deny, suspend, modify, or terminate the services to the department and request an administrative hearing before the department. Appeals and request for hearings must be in writing and sent to the following address by certified mail: Newborn Screening Program, Health Screening and Case Management Unit, Mail Code 1918, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. Failure to respond will be deemed a waiver of the appeal and of the opportunity for a hearing.

(4) Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules, §§1.51-1.55 of this title (relating to Fair Hearing Procedures).

§37.64. Advisory Bodies and Task Forces.

The commissioner may appoint both technical and lay advisory committees to assist in the administration of the Newborn Screening Program. The commissioner may also convene special task forces to assist the program and advisory committees with technical expertise or to address special emotional, social, educational, financial, or other problems which arise in families having a family member with a confirmed diagnosis of phenylketonuria, other heritable disease, or hypothyroidism.

§37.65. Confidentiality of Information.

(a) All information required to be submitted by these sections may be verified by the department with or without notice to any individual applying for or receiving newborn screening benefits, or to the providers of program benefits. Except as necessary for timely and effective referral for diagnostic services or to ensure appropriate management for individuals with confirmed diagnoses, the information received by the program in the administration of the program is confidential to the extent authorized by law.

(b) Information may be disclosed in summary, statistical, or other forms, which do not identify particular individuals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 26, 2006.

TRD-200603436
Cathy Campbell
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER Z. COASTAL PROTECTION FEE

34 TAC §3.692

The Comptroller of Public Accounts proposes an amendment to §3.692, concerning definitions, reporting requirements and amount of fee. This section is being amended pursuant to Senate Bill 1863, 79th Legislature, 2005. Senate Bill 1863 changed language to reduce the rate of the fee and reduce the maximum and minimum thresholds for the Coastal Protection Fund (Natural Resources Code, §40.155(a), (b)).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended rule will be in providing correct information to fee payers and collectors regarding their responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Natural Resource Code, §40.155.

§3.692. Definitions, Reporting Requirements and Amount of Fee [~~(Natural Resources Code, §40.155 and §40.156)~~].

(a) (No change.)

(b) Reporting requirements.

(1) Each marine terminal operator, or owner of crude oil who is registered with the comptroller to report the fee, shall file a coastal protection fee report with the comptroller stating the number of barrels of crude oil and condensate off-loaded from vessels or loaded onto vessels at marine terminals located in Texas. The volume shall be determined by tank tables compiled to show 100% of the full capacity of the tank or by use of industry standard automatic measuring equipment, and shall be corrected to 60 degrees Fahrenheit [~~F~~]. The volume may be reduced by a reasonable allowance for basic sediment and water as determined by tests generally recognized by the industry to be accurate.

(2) - (3) (No change.)

(c) Amount of fee.

(1) Except as provided in paragraphs (2) and (4) of this subsection, the rate of the fee will be $.01333 [~~$.02~~] per barrel of crude oil or condensate.

(2) When the balance in the coastal protection fund has reached $20 [~~$25~~] million, the commissioner of the General Land Office will certify that fact to the comptroller. The fee will not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller.

(3) If the commissioner of the General Land Office certifies to the comptroller that the balance of the coastal protection fund has fallen below $10 [~~$14~~] million, the fee will again be due at the rate of $.01333 [~~$.02~~] per barrel.

(4) The rate of the fee will be $.04 per barrel of crude oil or condensate when:

(A) the commissioner of the General Land Office certifies to the comptroller that:

(i) the balance in the coastal protection fund is less than $20 [~~$25~~] million; and

(ii) - (iii) (No change.)

(B) The fee will not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller that the balance in the coastal protection fund has reached:

(i) $20 [~~$25~~] million; or

(ii) (No change.)

(5) (No change.)

(d) (No change.)

(e) Penalty. Penalties due on delinquent fees and reports will be imposed as provided by [~~the~~] Tax Code, §111.061.

(f) Interest. Interest due on delinquent fees will be imposed as provided by [~~the~~] Tax Code, §111.060.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2006.

TRD-200603372
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT
SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.1

The Texas Youth Commission (the commission) proposes an amendment to §87.1, concerning Case Planning. The amend-

ment to the section will establish new schedules for reviewing and updating individual case plans which correspond to each youth's classification and placement restriction level. The amendment allows longer intervals between case plan updates for youth in high restriction placements.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be enabling case managers to produce quality individual case plans and spend more time with each youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. No private real property rights are affected by adoption of this amendment.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.076, which provides the commission with the authority to require a child to participate in correctional training and activities.

The proposed amendment implements the Human Resources Code, §61.034.

§87.1. Case Planning.

(a) (No change.)

(b) Definitions.

(1) - (2) (No change.)

(3) Primary Service Worker (PSW)--the generic title given to persons at each TYC program who are assigned the primary responsibility for the case work for individual youth and for the administration of the case management standards. The three (3) types of PSW are:

(A) Institutional PSW [~~Primary Service Worker (PSW)~~]--person assigned the primary responsibility for casework and administration of the case management standards in a high restriction TYC operated facility or contract placement.

(B) Transitional PSW [~~Primary Service Worker (PSW)~~]--person assigned the primary responsibility for casework and administration of the case management standards in a TYC operated halfway house or a medium restriction residential contract facility.

(C) (No change.)

(c) Case Planning.

(1) An ICP will be developed with and for each youth by the PSW. [~~The plan will be updated monthly.~~] The plan will be developed in accordance with the Resocialization program and identified needs and strengths and must specify measurable objectives, expected outcomes and a means to evaluate progress. See §87.2 of this title (relating to Resocialization Program). The plan will be updated every:

(A) 90 days for Type A violent and sentenced offenders in high restriction facilities;

(B) 60 days for offenders other than Type A violent and sentenced offenders in high restriction facilities; and

(C) 30 days for all offenders in medium restriction facilities.

(2) - (3) (No change.)

(4) The ICP development shall include a review of youth progress and [~~monthly~~] objectives and shall be developed with the youth and family when possible.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 23, 2006.

TRD-200603428
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 424-6014

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter C. Performance and Contract Management, §800.81

Subchapter E. Sanctions, §800.151

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed rules amendment is to eliminate references in this chapter to Chapter 805, relating to the Job Training Partnership Act Rules. Chapter 805 of this title is concurrently being proposed for repeal in its entirety because the rules are no longer necessary.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT

The Commission proposes the following amendment:

§800.81. Performance

Section 800.81(i) is deleted. Based on the concurrent proposed repeal of Chapter 805 of this title, the Job Training Partnership Act Rules, this subsection is obsolete.

SUBCHAPTER E. SANCTIONS

The Commission proposes the following amendment:

§800.151. Scope and Purpose

Section 800.151(d) is deleted. Based on the concurrent proposed repeal of Chapter 805 of this title, the Job Training Partnership Act Rules, this subsection is obsolete.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no estimated additional costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There will be no probable economic costs to persons required to comply with this rule, and there will be no adverse economic effect on small businesses.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with federal and state requirements.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved. Additionally, the Commission provided the policy concept regarding the concurrent proposed repeal of Chapter 805, relating to the Job Training Partnership Act Rules, to the Boards for consideration and review.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT

40 TAC §800.81

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.81. Performance.

(a) A Board shall meet or exceed performance targets as referenced in contracts with the Agency.

(b) The Commission shall determine the performance targets based on federal and state performance standards and by using factors that may be necessary to achieve the mission of the Commission and reflect local conditions. The Commission approves individual Board performance targets annually, which may be adjusted based on local conditions including, but not limited to, specific economic conditions and demographic characteristics of the workforce area.

(c) A Board and other subrecipients[~~subrecipient~~] shall comply with all Commission rules, Workforce Development (WD) Letters, the Financial Manual for Grants and Contracts, [~~Grants and Contracts Manual, the Financial Manual~~] and guidance letters of the Agency, including rules contained in other chapters of Part 20 of this title applicable to specific services and activities performed by a Board and other subrecipients.

(d) A Board's achievement of high levels of performance may result in the Commission providing incentives for the Board.

(e) A Board's failure to meet minimum levels of performance as referenced in the Board's contract may result in corrective actions, penalties, or sanctions as specified in:

(1) Part 20 of this title (relating to the Texas Workforce Commission), including Chapter 800, Subchapter E, relating to Sanctions;

(2) the Board's contract with the Commission; or

(3) [~~as otherwise provided for by~~] federal or state statute or rule.

(f) A Board may submit to the Commission a request for an adjustment to the minimum levels of performance.

(g) The Commission may determine what constitutes a necessary adjustment to local performance targets and may consider specific economic conditions and demographic characteristics to be served in the [~~local~~] workforce [~~development~~] area and other factors the Commission deems appropriate including the anticipated impact of the adjustment on the state's performance.

(h) The Governor may adopt additional performance incentives and sanctions provisions as provided in WIA.

[~~(i) A Board shall comply with and remain subject to the provisions contained in Chapter 805 effective on July 1, 2001, relating to performance or any other matters addressed in Chapter 805 regarding any funds granted by the Secretary of Labor under the JTPA regulations or Act, including NRA and other funds.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603419
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER E. SANCTIONS

40 TAC §800.151

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.151. Scope and Purpose.

(a) The purpose of this subchapter is to:

(1) ensure accountability of Boards [~~Local Workforce Development Boards (Boards)~~] and other subrecipients of the Agency, in meeting the needs of employers and job seekers;[~~,~~]

(2) ensure performance in reaching outcome measures;[~~,~~]

(3) ensure adequate returns on state investments;[~~,~~] and

(4) support the state in achieving its goals.

(b) The Agency may review financial, administrative, and performance data to evaluate a Board and subrecipients [~~subrecipient~~] of the Agency to determine the need for sanctions.

(c) To accomplish the purposes of this subchapter[~~Subchapter~~], the Agency may require at any point during the year that a Board or subrecipients [~~subrecipient~~] of the Agency cooperate with remedial actions, including, but not limited to, entering into a Performance Improvement Plan and other performance review and assistance activities.

[~~(d) This rule incorporates by reference the existing rule for the Job Training Partnership Act Program cited in §805.170 - §805.196 of this title.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603420
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0829

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CHAPTER 805. JOB TRAINING PARTNERSHIP ACT RULES

The Texas Workforce Commission (Commission) proposes the repeal of the following sections of Chapter 805, relating to the Job Training Partnership Act (JTPA) rules:

Subchapter A, General Provisions:

§§805.101 - 805.106

Subchapter C, Job Training Plans:

§§805.140 - 805.155

Subchapter D, Performance Standards:

§§805.160 - 805.165

Subchapter E, State Monitoring and Sanctions Policies:

§§805.170 - 805.196

Subchapter F, Financial Management Rules:

§§805.200 - 805.232

Subchapter G, Eligibility Policies and Procedures:

§§805.240 - 805.249

Subchapter I, JTPA Grievance Procedures:

§§805.280 - 805.298

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. IMPACT STATEMENTS

PART III. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed repeal is to eliminate Chapter 805, relating to the JTPA rules. The Workforce Investment Act repealed JTPA and initiated a new delivery system for providing employment and training services. Therefore, these rules are no longer required.

PART II. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the proposed repeal will be in effect, the following statements will apply:

There are no estimated additional costs to the state and to local governments expected as a result of enforcing or administering the repeal.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the repeal.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the repeal.

There will be no probable economic costs to persons required to comply with this repeal, and there will be no adverse economic effect on small businesses.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the repeal.

Luis M. Macias, Director, Workforce Development Division, has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the proposed repeal will be to ensure compliance with federal and state requirements.

PART III. COORDINATION ACTIVITIES

In the development of the proposal for publication and public comment, the Commission sought the involvement of each of Texas' 28 Boards. The Commission provided the policy concept regarding the proposed repeal to the Boards for consideration and review.

Comments on the proposed repeal may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§805.101 - 805.106

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.101. Short Title and Purpose.

§805.102. General Definitions.

§805.103. General Duties of Governor's Office.

§805.104. General Duties of the Texas Workforce Commission.

§805.105. The Texas Council on Workforce and Economic Competitiveness.

§805.106. Implementation of USDOL Final Rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603412
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER C. JOB TRAINING PLANS

40 TAC §§805.140 - 805.155

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.140. Plan Submission for Review and Approval.

§805.141. Standards for Plan Approval or Disapproval.

§805.142. Plan Modification or Amendment.

§805.143. Criteria for Plan Modification.

§805.144. Criteria for Plan Amendment.

§805.145. Competency System Development and Approval.

§805.146. Submission for State Approval.

§805.147. Elements of a Sufficiently Developed Competency System.

§805.148. Substate Plans.

§805.149. Carry-Over Funds.

§805.150. Services to Displaced Homemakers.

§805.151. Rapid Response Grants.

§805.152. Certificate of Continuing Eligibility.

§805.153. Allotment of Dislocated Worker State Reserve Funds.

§805.154. Discretionary Fund Distribution Process.

§805.155. Waiver of Expenditures for Retraining Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603413
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER D. PERFORMANCE STANDARDS

40 TAC §§805.160 - 805.165

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.160. Definitions.

§805.161. Variations to DOL Performance Standards.

§805.162. State Performance Standards.

§805.163. Incentive Grants for Exceeding DOL Performance Standards.

§805.164. Incentive Grants for Exceeding State Standards.

§805.165. Distribution of Any Remaining Incentive Funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603414
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER E. STATE MONITORING AND SANCTIONS POLICIES

40 TAC §§805.170 - 805.196

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.170. Purpose and Authority.

§805.171. Definitions.

§805.172. State Monitoring.

§805.173. The Monitoring Report.

§805.174. Responses to Monitoring Reports.

§805.175. Local Monitoring Plan Development.

§805.176. Subrecipient Roles and Responsibilities.

§805.177. Assessment of Subrecipient Monitoring Functions.

§805.178. PIC Oversight Standards.

§805.179. State Sanctions Policy and Procedures.

§805.180. Sanctions Procedures.

§805.181. Repeated Problems or Findings.

§805.182. Imposition of Sanctions.

§805.183. Technical Assistance and Reorganization.

§805.184. Failure To Meet Performance Standards.

§805.185. Technical Assistance Plan.

§805.186. SDA/SSA Reorganization Plan Due to Consecutive Failure.

§805.187. Sanctions for Continued Violations.

§805.188. Subrecipient Annual Audit Requirement.

§805.189. Audit Costs.

§805.190. Competitive Bidding To Procure Auditor.

§805.191. Contents of Audit Report.

§805.192. Subrecipient Annual Audit Plan.

§805.193. Audit Submissions.

§805.194. Informal Resolution Process.

§805.195. Failure To Submit Audit.

§805.196. Appeals from Final Determinations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603415
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER F. FINANCIAL MANAGEMENT RULES

40 TAC §§805.200 - 805.232

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.200. Purpose and Authority.

§805.201. General Cash Management.

§805.202. Subrecipient Bonding.

§805.203. Repayment of Disallowed Costs.

§805.204. Historically Underutilized Businesses (HUBs).

§805.205. Insurance Requirements.

§805.206. Refund Policy.

§805.207. Allowable and Unallowable Costs.
§805.208. Definition of an Obligation.
§805.209. Reporting Obligations.
§805.210. Voluntary Deobligation.
§805.211. Contractor Code of Conduct.
§805.212. JTPA Records and Files.
§805.213. Methods of Procurement.
§805.214. Competitive Negotiation Method.
§805.215. Request for Proposal (RFP) Process.
§805.216. Statement of Work.
§805.217. Noncompetitive Negotiation (Sole Source) Method.
§805.218. Processing of Noncompetitive Procurements.
§805.219. Cost/Price Analysis.
§805.220. Contract Payments.
§805.221. Contract Budgets.
§805.222. Fixed-unit Price Contracts.
§805.223. Nonexpendable Personal Property Management.
§805.224. Subrecipient Property Inventory.
§805.225. Property Maintenance and Security.
§805.226. Shared Use of JTPA Property.
§805.227. Disposition of Excess Nonexpendable JTPA Property.
§805.228. Reporting Requirements.
§805.229. The Closeout Process.
§805.230. Resolution of Questioned Costs.
§805.231. Subrecipient Time Limitations.
§805.232. Variance from Uniform Grant and Contract Management Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603416
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER G. ELIGIBILITY POLICIES AND PROCEDURES

40 TAC §§805.240 - 805.249

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.240. Purpose and Authority.
§805.241. Definitions.
§805.242. Record of Documentation To Verify Eligibility.
§805.243. Basic Forms for Eligibility Documentation.
§805.244. Information To Establish Income Eligibility.
§805.245. Verification by Telephone or Document Inspection.
§805.246. Verification by an Applicant Statement.
§805.247. Title III/EDWAA Eligibility Definitions.
§805.248. Additional Categories of "Terminated" or "Laid Off".
§805.249. Defense Conversion Adjustment Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603417
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0829

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SUBCHAPTER I. JTPA GRIEVANCE PROCEDURES

40 TAC §§805.280 - 805.298

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.280. Purpose and Coverage.
§805.281. Definitions.
§805.282. Grievance Filing Procedures at the Local Level.
§805.283. Time Limitations at Local Level.
§805.284. JTPA Contractor Responsibilities.
§805.285. Orientation to Complaint Procedure.
§805.286. Local Level Informal Conference Procedure.
§805.287. Opportunity and Request for a Hearing.
§805.288. Notice of Hearing at Local Level.
§805.289. Hearing Officer.
§805.290. Local Level Hearing Procedure.
§805.291. Written Decision.
§805.292. Request for Review of a Written Decision.
§805.293. Procedure for Review by the Texas Workforce Commission.
§805.294. Final Written Decision.
§805.295. Optional Forms Available.

§805.296. Appeal of a Commission Action or Decision.
§805.297. Formal Hearing Procedure at State Level.
§805.298. Final State Action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603418
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: August 6, 2006
For further information, please call: (512) 475-0829

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 50. PREMISES AND ANIMAL IDENTIFICATION

4 TAC §§50.1 - 50.5

Proposed new §§50.1 - 50.5, published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8521), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on June 23, 2006.

TRD-200603429

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.223

The Texas Real Estate Commission withdraws the proposed amendment to §535.223 which appeared in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4160).

Filed with the Office of the Secretary of State on June 20, 2006.

TRD-200603380
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: June 20, 2006
For further information, please call: (512) 465-3900

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22 TAC §§535.232 - 535.238

The Texas Real Estate Commission withdraws the proposed new §§535.232 - 535.238 which appeared in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4161).

Filed with the Office of the Secretary of State on June 20, 2006.

TRD-200603378
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: June 20, 2006
For further information, please call: (512) 465-3900

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.781

The Health and Human Service Commission (HHSC) adopts amended §355.781, concerning the reimbursement methodology for Rehabilitative Services, in Chapter 355, Reimbursement Rates. The amendment is adopted without changes to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3139) and will not be republished.

The amended §355.781 identifies the department (formerly the Texas Department of Mental Health and Mental Retardation (TDMHMR) or successor agency) as the Department of State Health Services (DSHS) and removes any references to "TDMHMR". Also, due to the restoration of the general counseling benefit to all Medicaid recipients, the reference to rehabilitative counseling and psychotherapy is removed from the rule. The rule is further amended to allow the provision of skills training in a group format to a child or adolescent.

HHSC did not receive any comments regarding the proposed rule during the comment period.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 2006.

TRD-200603432

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2006
Proposal publication date: April 14, 2006
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.134

The Public Utility Commission of Texas (commission) adopts new §26.134, relating to the Market Test to be Applied in Determining if Markets with Populations Less Than 30,000 Should Remain Regulated after January 1, 2007 with changes to the proposed text as published in the March 24, 2006, *Texas Register* (31 TexReg 2352). The new rule, implementing PURA §65.052(f), establishes the market test to be applied in determining whether a market with a population of less than 30,000 should remain regulated after January 1, 2007. Project Number 32169 is assigned to this proceeding.

The new section applies to all incumbent local exchange carriers (ILECs). The market test is based upon the number and type of competitors providing service in the market. In many of the markets with a population less than 30,000, the rural exemption as provided for in Section 251(f)(1) "Exemption for Certain Rural Telephone Companies" of the Federal Communications Act of 1934 is effective. In those markets, the new rule requires that exemption to be removed. In addition, the new section provides the schedule for implementation of the new provisions.

The commission received initial comments on the proposed rule from Southwestern Bell Telephone, L.P. d/b/a AT&T Texas (AT&T Texas), Verizon Southwest (Verizon), Texas Telephone Association (TTA), Office of the Attorney General of the State of Texas (State), and Office of Public Utility Counsel (OPC). Additionally, the commission received reply comments from AT&T Texas and the State. A Public Hearing was held in this matter on May 5, 2006. In attendance were representatives of the State, TTA,

AT&T Texas, John Starulakis, Inc. (JSI), OPC, Verizon, and Texas Statewide Telephone Cooperative, Inc.

A summary of the stakeholders' filed comments and commission responses are set forth hereafter.

In the publication preamble, the commission asked a question regarding how the commission should account for any situations in which robust telecommunications competition exists in a market, but the type of competitors in the market does not completely mirror the types of competitors delineated in subsection (c).

Commission Response

The State and OPC responded to the commission's preamble query and made specific recommendations applicable to §26.134(c) of the proposed rule that addressed their concerns. Given that the responses to the question were specific to §26.134(c), the summary of comments and the commission's responses appear in that section of the preamble.

Subsection 26.134(c) of the new rule outlines the market test for exchanges with populations less than 30,000 (hereinafter sometimes referred to as "small markets").

Verizon, the State, and OPC commented on the number and type of competitors required in each market.

Verizon commented that, at the very least, the proposed rule should be modified to require only two competitors to the ILEC to satisfy the market test: a wireless competitor and a facilities-based wireline competitor. Verizon justified this proposed modification by stating that it believed the Legislature intentionally refused to apply the same test to small markets that it applied to large markets, thus recognizing that small markets generally attract fewer competitors, but are still subject to deregulation under Senate Bill 5.

Commission Response

The commission declines to modify the rule based upon Verizon's comment. The commission finds that a list of two competitors does not provide customers with sufficient choice.

The State described the proposed rule as an attempt to modify the law applicable to mid-sized markets (30,000-100,000 in population), which simply required the existence of three different, statutorily established, type competitors in a market to deregulate it. The State proposed language in subsection (c)(1) to increase the number of competitors from three to four or more of the types listed in (c), without a specific requirement of any particular mix of the four types of competitors listed.

Commission Response

The commission declines to make either suggested change. The State's suggestion could result in deregulation of an exchange where there are four competitors of any type. The commission finds that this approach would provide some customer choice, but because all four of the competitors could be the same type, this approach would not provide sufficient customer choice to justify deregulation of that exchange. Customers should have choice, not only among a certain number of competitors, but also among different types of providers. The commission believes that the test outlined in the rule, based upon the requirements for markets 30,000 to 100,000 in population, is the appropriate market test.

OPC supported the inclusion in the commission's proposed rule of the requirement that at least one of the three competitors be an entity providing residential service using facilities that the entity or its affiliate owns. However, OPC recommended "tightening" this subsection by including the requirement that the facilities-based provider either hold a certificate of operating authority or service provider certificate of operation authority, or clarifying that the facilities-based provider is not to be counted towards meeting the criteria of the competitors in subsection (c)(2).

Commission Response

The commission does not add the requirement suggested by OPC. The commission anticipates that the competitors "providing residential service using facilities that the entity or its affiliate owns" often will be cable companies utilizing VOIP technology. The commission believes that such competitors should be counted in the market test. Depending upon future action by the Federal Communications Commission, such entities may or may not be required to hold certificates. Therefore, the commission is concerned that requiring certification may preclude these entities from being considered a competitor for the purposes of demonstrating competition within small market areas.

OPC commented that the rule is not sufficiently clear if a subsection (c)(1) competitor, the facilities based provider, could be considered as a competitor for the purposes of subsection (c)(2) as well.

Commission Response

The commission acknowledges OPC's concern and revises subsection (c) to include the word "separate" before competitors to clarify that three separate competitors must exist in the market.

Subsection (c)(2)(C) requires that a satellite telecommunications provider, in order to be counted under the market test, must be certified as an eligible telecommunications carrier for the entire market pursuant to §26.418 of this chapter.

AT&T Texas stated concern with this provision, arguing that because the ETC requirements of §26.418 are probably foreign and burdensome to satellite providers, it is highly unlikely that such providers will pursue certification under §26.418. Thus, left as written, the rule would require the commission to hold that a competitive satellite provider could not be considered a competitor if the satellite provider did not seek ETC status. Further, AT&T Texas noted that no such requirements were imposed on cable providers or wireless providers when the Legislature enacted PURA Subchapter B of Chapter 65. AT&T Texas suggested for the above reasons, the ETC requirements should be removed from subsection 26.134 (c)(2)(C) of the proposed rule.

In its reply comments, the State noted that both satellite and wireless providers have sought and likely will continue to seek ETC designation due to both favorable market conditions and the current existence of universal service subsidies in those areas. The State noted that the ETC designation requirement is a useful proxy to measure penetration into markets in which only one or two competitors are present.

Commission Response

The commission declines to make the change requested by AT&T Texas. The commission agrees with the comments of the State that the fact that satellite providers have sought ETC designation, the requirements must not be foreign and burdensome to this type of carrier.

The commission, however, rejects the State's argument that the ETC designation is a proxy to measure market penetration. Rather, the commission finds it appropriate to require that a satellite provider be designated as an ETC in order to be counted

in the market test because, unlike other types of providers, a satellite provider could provide service in most areas of the state and does not have facilities located in one geographic area. The ETC designation requires a provider to advertise its services in the geographic area in which it is designated as an ETC. The commission is concerned that eliminating this requirement would allow a satellite provider to be counted for the market test while no potential customers would be aware of that competitive choice.

In contrast to AT&T Texas's position, both OPC and the State recommended extending the ETC requirement to other types of providers.

OPC proposed a change to subsection (c)(2)(C) to require any telecommunications provider, not just a satellite telecommunications provider, to be certified as an eligible telecommunications carrier for the entire market pursuant to §26.418. OPC maintained the commission would be ensuring that the carrier would eventually be serving the entire market and established service standards would be met. According to OPC, this modification would create a technology neutral rule and might ensure the rule would not need to be reopened to address any new technology that was excluded.

The State proposed to add additional rule language at subsection (c)(2)(B) that would require commercial mobile service operators to be certified as an eligible telecommunications carrier for the entire market pursuant to §26.418, relating to *Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Funds*, in order to be considered a qualifying competitor.

Commission Response

The commission declines to require any telecommunications provider, other than a satellite provider, to be designated as an ETC in order to be counted as a competitor pursuant to the market test. For providers with facilities in a particular geographic area, the commission believes that such providers will generally advertise to sell their services to customers.

The State, OPC, and TTA suggested alternative market tests or significant modifications to the proposed market test.

In addition to the changes proposed to subsection (c), the State suggested an alternate market test would be appropriate for markets that could not meet the first test. Such a test would require a public interest finding by the commission when the requisite competitors are not present, but where there is a ubiquitous presence by fewer competitors, and which measures, at least to some degree, the amount of penetration of competition in small markets when fewer competitors are present but there is ubiquitous presence by such competitors.

Therefore, the State recommended an additional new market test as a stand-alone subsection (d) (and the requisite re-lettering and re-numbering of the ensuing provisions) that would deregulate a small market when: (1) one to three competitors exist, (2) a market penetration test can be met which demonstrates each competitor offers to provide service to at least fifty percent (50%) of the market, and (3) the commission finds that deregulation of such market is in the public interest. The State suggested that the market penetration portion of the proposed test can be determined by using a percentage of total square miles, number of wire centers, or number of census blocks as the denominator, and the square mileage, number of wire centers, or number of census blocks in the market in which service is offered as the numerator.

OPC also supported a market penetration test; however, OPC commented that such a test should be included in subsection (c). OPC commented that a minimum market penetration criterion requiring each qualifying competitor to serve no less than one percent of the market and that all three combined provide service to no less than 25% of the market.

TTA believed that some small markets may never experience the conditions described in subsection (c), and argued that there should be a mechanism whereby the commission could exercise discretionary authority to deregulate such small exchanges without a predetermined market test. TTA argued the commission should allow companies within such exchanges to produce evidence demonstrating a sufficient level of competition. TTA argued that markets served by two providers (including the ILEC), where each is designated as an ETC, should be deregulated because under those conditions the commission will know that the competitive ETC offers (and advertises) myriad telecommunications services throughout the market.

AT&T Texas, in its reply comments, opined that the Legislature expected future deregulation proceedings and argues that Senate Bill 5 provides a clear path to deregulate markets with populations below 30,000, knowing that the commission has the authority to re-regulate should that be appropriate under PURA §65.055. The ability to re-regulate, according to AT&T Texas again, provides a "safety valve" should deregulation harm the market place. AT&T Texas argues that the timeframes imposed by the legislature--the sequence of timeframes contained in Subchapter B of Chapter 65--when combined with PURA §65.055, make it clear that complex tests are unnecessary and contrary to the intent of the Legislature. According to AT&T Texas, given the November 30, 2006, statutory deadline, only a simple market test can be utilized. According to AT&T Texas, complex or vague tests should be rejected, as the commission and the parties need to know precisely what evidence will be used in the deregulation analysis. AT&T Texas notes that uncertainty could confuse and delay the commission's statutorily-imposed decision-making responsibility and that a clear test will allow the commissioners to receive and digest the evidence with all deliberate speed.

Commission Response

The commission agrees with AT&T that complex or vague tests should be rejected. Therefore, the commission declines to modify the rule to include the additional market penetration test suggested by the State, the market penetration test offered by OPC, or the comment from TTA that the market test should, in effect, be discretionary. The commission is concerned about the time and resource constraints for the parties as well as the commission associated with determining the contentious and complex issues associated with any market penetration test or a more discretionary know-it-when-you-see-it test.

TTA and AT&T Texas argued that this new rule should apply only to the markets to be deregulated in 2006.

TTA urged that in the event the commission does not believe it can examine some of these exchanges on a case-by-case basis before the statutory deadline of 2006, the commission should allow for discretionary deregulation authority after July 1, 2007.

AT&T Texas argued in its reply comments that this project should be limited to creating the market test used to meet the requirements of PURA §65.052(f) and should not limit what evidence

might be appropriate under PURA §65.054(a), which, according to AT&T Texas, contemplates future dockets. AT&T Texas asserted that as customer choice develops due to advances in technology, the market test for small and medium-sized markets may need to evolve accordingly. Therefore, according to AT&T Texas, the market test developed in this project should not foreclose consideration of additional technology and competitors in the future.

Commission Response

The commission has a statutory deadline of November 30, 2006, to make the initial findings of whether markets under 30,000 population are deregulated. After the initial finding in 2006 and beginning July 1, 2007, ILECs can request that the commission determine the status of the remaining regulated markets. The commission declines to make the changes requested by TTA and AT&T Texas. The commission finds that the market test adopted in this proceeding is the appropriate test. If, at a later date, the commission finds it necessary to modify the market test, it can do so through another rulemaking proceeding. If a party believes that the market test should be revised, it can file a petition for rulemaking. The commission finds that the market tests applicable to ILEC requests filed pursuant to PURA §65.054(a) are as follows: (1) for markets with populations between 30,000 and 100,000, the appropriate market test is provided in PURA §65.052 ,and (2) for markets with populations under 30,000 population, the appropriate market test is the one set forth in this rule.

AT&T Texas argued that the first sentence in proposed §26.134(c), which dictates that *"only if" the ILEC "submits evidence" that meets the substantive requirements shall the market be deregulated*, is contrary to the statutory language that gave rise to this rulemaking. AT&T Texas quoted PURA §65.051(b) as stating that a market with a population of less than 30,000 "*is* deregulated" on January 1, 2007, "unless the commission determines under §65.052(f) that the market should remain regulated." According to AT&T Texas, this statute assigns the commission the responsibility to take affirmative action to reach a conclusion with regard to deregulation. AT&T Texas further argued that the statute does not authorize the commission to require that any party come forward with evidence as to whether a particular area should be deregulated. Even though AT&T Texas noted that it is entitled to and will provide relevant evidence, should that evidence somehow fail to persuade the commission, it argued that the commission still has the ability and responsibility to examine whatever information is available to it and decide whether the area should remain regulated under the statute.

Commission Response

The commission notes that the requirement that the ILECs bring forward the necessary evidence to demonstrate that they meet the market test is not novel. The ILECs, including AT&T Texas, that participated in Docket Number 31831 for the deregulation of markets with populations of 30,000 or more were subject to the same requirement. The requirement is necessary partly because, as indicated in earlier responses, the commission is faced with considering and processing a substantial amount of information in a very limited amount of time. Moreover, the commission does not, as AT&T Texas's comments suggest, possess in any readily available form, the information that would demonstrate that any given market fulfilled the requirements of this test. Simply put, if the burden of proof is on the commission, then the commission will be compelled to rely on the information it has, which would indicate at this time that sufficient competition does not exist in any small market.

The commission believes a more practical approach is for industry participants seeking to be deregulated in specific markets, known only to them, to submit evidence specific to those markets upon which the commission can then decide if the competitive threshold requirements of the rule have been met. The commission finds this approach to be the only practicable solution to this issue, considering the limited time it has to examine and process the information that will be required to determine the competitive status of these small markets.

Section 26.134(d) provides that in addition to meeting the requirements of subsection (c), an ILEC seeking deregulation of a market area for which the rural exemption as provided for in Section 251(f)(1) of the Communications Act of 1934 applies must meet an additional requirement. The rural exemption effectively prevents certain wireline competitors from entering a market. Such ILEC seeking deregulation must have that rural exemption removed by the commission in order for that market not to remain regulated.

TTA maintained that small markets should be eligible for deregulation without regard to the status of the rural exemption. It suggested that most rural ILECs are more subject to intermodal competition than intramodal competition, such as facilities-based providers as prescribed by PURA §65.052(b)(2)(B). Further, TTA pointed out that rural telephone companies with markets between 30,000 and 100,000 are allowed to deregulate those markets without regard to the status of the rural exemption.

The State, in both its initial comments as well as its reply comments, supported the inclusion of the requirement that any existing exemption be removed prior to deregulation of a market. In its reply comments, the State opined that it is counterintuitive to deregulate a market but maintain restrictions on wireline market entry by failing to remove the ILEC's rural exemption.

Commission Response

The commission agrees with the State and declines to make the change requested by TTA. The commission believes that if a market is deregulated, all market entry barriers should be lifted, including the rural exemption.

At the public hearing, a representative of JSI requested that subsection (d) of the commission's proposed rule to be modified to clarify that rural exemptions for small markets will be lifted on a market-by-market basis.

Commission Response

The commission agrees with the request made by the representative of JSI. The rural exemption pursuant to Section 251(f)(1) applies to all of an ILEC's markets. The requirement that the rural exemption be lifted should apply only to the markets in which the ILEC is seeking deregulation, not to all of the ILEC's markets. Therefore, the commission has revised its proposed rule to reflect its market-by-market approach to lifting the rural exemption.

In addition, the commission removes the phrase "filed by the ILEC" from section (d). The commission finds that the operative language is the phrase "approved by the commission" and that the entity actually filing the request is immaterial.

Section 26.134(e) sets forth the time frame requirements for submitting evidence for markets deregulated on January 1, 2007 and for markets deregulated after January 1, 2007.

AT&T Texas suggested that subsection (e) of the proposed rule should be eliminated in its entirety. According to AT&T Texas, eliminating subsection (e)(1) would avoid a situation where the commission is forced to choose between ignoring evidence and violating its own rule. AT&T Texas asserted subsection (e)(2) should be eliminated as it unnecessarily ties two events together, i.e., that which must occur before November 30, 2006 and that which may occur after July 1, 2007. According to AT&T Texas since the statutory basis for these two events is different, any rule based on these statutes should not necessarily be identical. AT&T Texas opined that the commission has the responsibility to affirmatively take certain action by November 30, 2006. According to AT&T Texas, under PURA §65.054, the commission shall react to a petition filed with it. According to AT&T Texas, this distinction allows for different treatment of parties' burdens of providing evidence and, further, according to AT&T Texas, it is unclear that procedural requirements are needed now to address a petition filed under PURA §65.054. For these reasons, AT&T Texas suggested that subsection (e)(2) be stricken from the proposed rule.

Commission Response

The commission declines to make the changes requested by AT&T Texas. The commission finds subsection (e) of the rule provides instructive guidance necessary for it to successfully examine existing competitive conditions in small markets. Further, the commission believes that AT&T Texas's arguments here are another attempt to raise the burden of proof issue, discussed *ante*, and the idea that a different market test would be appropriate for proceedings conducted in 2007 and later.

The commission disagrees with AT&T Texas for the reasons articulated in the commission's response above to the burden of proof issue.

Further, as noted above, the commission disagrees with AT&T Texas that the statutory basis for the proceeding in 2006 is materially different from any proceedings in 2007 or later. The market tests, as outlined above, are applied in either situation. The only statutory difference is timing.

The commission acknowledges all of the comments filed by the parties and will continue to evaluate the need to conduct a comprehensive review of service objectives and performance benchmarks for all LECs in Texas.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This rule is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, §65.003, relating to commission authority, §65.004, concerning collection of information, §65.051, regarding deregulation of markets, and §65.052(f), relating to applicable test for deregulation of certain markets.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 65.003, 65.004, 65.051, and 65.052.

§26.134. Market Test to be Applied in Determining if Markets with Populations Less than 30,000 Should Remain Regulated on or After January 1, 2007.

(a) Purpose. The purpose of this section is to establish the market tests to be applied in determining if markets with populations less than 30,000 should remain regulated after January 1, 2007.

(b) Application. This section applies to all incumbent local exchange companies (ILECs), as defined in §26.5 of this title (relating to Definitions).

(c) Market Test. Markets as defined in §65.002 of PURA with a population of less than 30,000 shall be deregulated only if the ILEC providing services to such a market submits evidence demonstrating that the population in the market is less than 30,000 and in addition to the ILEC there are three separate competitors:

(1) of which at least one competitor is an entity providing residential telephone service in the market using facilities that the entity or its affiliate owns; and

(2) of which at least two competitors must be from two different categories of the following:

(A) a telecommunications provider that holds a certificate of operating authority or service provider certificate of operating authority and provides residential local exchange telephone service in the market;

(B) a provider in that market of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et. Seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not affiliated with the incumbent local exchange company; and

(C) a satellite telecommunications provider certified as an eligible telecommunications carrier for the entire market pursuant to §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).

(d) Rural Exemption Waiver. In the event that an ILEC seeking deregulation of a market area with a population of less than 30,000 has a rural exemption as provided for in Section 251(f)(1) "Exemption For Certain Rural Telephone Companies" of the Communications Act of 1934, a petition for the removal of that rural exemption for that market must be approved by the commission in order for the market in question not to remain regulated. In addition, any such market must meet the conditions of the market test set forth in subsection (c) of this section.

(e) Timing.

(1) Markets shall be deregulated on January 1, 2007 only if the ILEC providing service to such a market(s) submits evidence on or before August 1, 2006 in compliance with subsection (c) of this section and, if applicable, subsection (d) of this section.

(2) After July 1, 2007 an ILEC petitioning for deregulation of a market with a population of less than 30,000 shall submit with its petition the evidence in compliance with subsection (c) of this section and, if applicable, subsection (d) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603425
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 12, 2006
Proposal publication date: March 24, 2006
For further information, please call: (512) 936-7211

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.61, §535.63

The Texas Real Estate Commission (TREC) adopts an amendment to §535.61, concerning Examinations and an amendment to §535.63, concerning Education and Experience Requirements for a License without changes to the proposed text as published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4157) and will not be republished.

The amendment to §535.61 authorizes the commission to waive the national portion of the examination for an applicant who has passed a comparable national examination that has been certified by a nationally recognized real estate regulator association. The amendment to §535.63 requires a salesperson subject to annual education (SAE) requirements to furnish documentation to the commission of successful completion of appropriate courses 10 business days prior to the day the salesperson renews the salesperson's license.

The reasoned justification for the amendments to the rules is acceptance of national test results from other states with comparable examinations and facile implementation of on-line renewal requirements.

No comments were received regarding the amendments to the rules as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2006.

TRD-200603379
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: July 10, 2006
Proposal publication date: May 19, 2006
For further information, please call: (512) 465-3900

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 126. GENERAL PROVISIONS APPLICABLE TO ALL BENEFITS

28 TAC §126.14

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance adopts new §126.14, concerning the treating doctor examination to define the compensable injury. The new section is adopted with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 671).

The new section is necessary as a result of House Bill 7, 79th Legislature, Regular Session, effective September 1, 2005, which created Labor Code §408.0042 for the purpose of defining an injured employee's compensable injury. Labor Code §408.0042 requires the injured employee to attend one examination per workers' compensation claim with the injured employee's treating doctor at the request of the insurance carrier. This examination is a voluntary option for insurance carriers to utilize as a tool in managing claims. The examination's purpose is to have the injured employee's treating doctor identify the specific injuries that were caused or aggravated by the work-related incident or activities. The insurance carrier will make a determination as to whether the injuries and diagnoses identified by the doctor are accepted as part of the compensable injury. The adopted rules also provide direction for participants in a workers' compensation health care network established under Insurance Code Chapter 1305.

The rule has been restructured and incorporates editorial and grammatical changes. Changes have also been made as a result of public comment; however, no substantive changes were made to the rule as proposed. Proposed subsection (d) has been deleted as a result of concerns regarding electronic reporting in TXCOMP and accessibility to all appropriate parties, and the subsections have been relettered appropriately. The various references to TXCOMP in the section have been deleted.

Subsection (a) relates to the scheduling of a single examination to define the compensable injury. An insurance carrier electing to utilize this provision must contact the treating doctor and schedule an appointment for the injured employee. The time period of 15 days from the date the notice is sent to the date of the examination was selected to provide ample time for mailing and to inform the injured employee that an examination had been scheduled. This time period allows adequate time for an injured employee to make any scheduling arrangements for the examination to accommodate time off work, transportation, and other accommodations.

Subsection (b) provides that the insurance carrier shall schedule the examination with the injured employee's treating doctor. The insurance carrier will need to check with the injured employee, the injured employee's legal representative (if any), the workers' compensation health care network, and/or the Division to verify that the doctor with whom the examination is being scheduled is the treating doctor and that no requests for change of treating doctor have been received or are pending. If there is a question, the examination should be delayed until the correct doctor is verified. In paragraph (1), additional changes were made to clarify the penalties associated with an insurance carrier's failure

to schedule the examination with the injured employee's treating doctor of record. If a change in treating doctor occurs, the timing of the doctor change will impact how the results of the examination will be considered. If a doctor change is requested prior to the examination notice, the results of the examination from the previous treating doctor may not be used to define the compensable injury. The insurance carrier may make a new request for an examination with the correct treating doctor. If the doctor change is requested after the examination notice, the examination results may be used because the results came from the treating doctor at the time the notice was sent.

Subsection (c) requires an insurance carrier to send a written notice of examination. Minor changes were made to the compulsory language based on public comment. Paragraph (4)(A) complies with the requirement to provide injured employees with information in plain language and to inform injured employees that they are required to attend this examination. Paragraph (4)(B) adds a requirement that the insurance carrier includes the name and phone number of the person to be contacted if the doctor named in the notice of examination is not the treating doctor. The injured employee should not attempt to change treating doctors after being informed the insurance carrier has scheduled this examination. Paragraph (4)(C) adds language informing the injured employee of the requirement that a rescheduled examination take place within seven days of the originally scheduled examination or at the treating doctor's first available appointment time, if no appointments are available during the seven-day period.

Subsection (d) addresses the rescheduling of the examination if the injured employee is unable to attend at the time scheduled by the insurance carrier. Latitude has been provided for rescheduling of the examination if the doctor does not have an available appointment time during that period. Subsection (e) details the consequences if the injured employee fails to attend the examination.

Subsection (f) provides the minimum required information that shall be included in the treating doctor's narrative report. This includes direction for situations where additional testing is required to ascertain the full extent of the injury. New mailing requirements have been provided. The subsection also outlines how compensable injuries and diagnoses are to be identified in the treating doctor's narrative. As a result of public comment, subsection (f)(3) requires that the treating doctor explain how the mechanism of injury caused a worsening of a condition if an aggravation of an ordinary disease of life or a preexisting condition is identified as part of the compensable injury.

Subsection (g) clarifies the process when diagnostic testing is required to define the compensable injury. Subsection (h) clarifies the allotted time and distribution requirements for the treating doctor to submit the narrative report from this examination.

Subsection (i) outlines information regarding the reimbursement associated with this type of examination. The reimbursement is $350, equivalent to the reimbursement for a required medical examination. Since this examination is for administrative purposes that require additional documentation and its results have significant bearing on the claim, it is deserving of a higher reimbursement than for treatment examinations. Testing necessary to define the compensable injury shall be reimbursed in accordance with the Medical Fee Guideline §134.202. Testing for network claims shall be reimbursed in accordance with the contract between the health care provider and the network. Testing necessary to confirm or rule out a diagnosis shall not be retrospectively reviewed for compensability if the treating doctor has documented the necessity for the test in defining the injury.

Subsection (j) outlines the insurance carrier's responsibilities once the treating doctor has submitted the narrative report defining the injuries and diagnoses the doctor determines were caused by the mechanism of injury. Changes were made to clarify the intent of this subsection as it pertains to other rules and the Act. The revised process (using PLNs rather than TXCOMP) requires that any specific diagnoses or injuries documented in the treating doctor's narrative report that the insurance carrier does not accept as part of the compensable injury must be denied in accordance with §124.2. Any injury or diagnosis documented in the treating doctor's narrative report that is not specifically denied via a Plain Language Notice (PLN), PLN-1 or PLN-11 will be considered accepted by the insurance carrier as part of the compensable injury. The terms "symptoms and conditions" were deleted from subsection (j)(1). Changes to this paragraph also address the concerns of commenters regarding the 60-day waiver period. The language clarifies the intent of the paragraph that the insurance carrier may not use this examination to diminish an injury established under Labor Code §409.021. Subsection (j)(2) reflects the requirements of §124.3(e) and Insurance Code §1305.153(e).

Subsection (k) informs the injured employee of the right to request a benefit review conference if the insurance carrier denies the compensability of specific injuries or diagnoses listed in the treating doctor's report.

Subsection (l) outlines the preauthorization requirements for any treatment for an injury or diagnosis identified from this examination and denied by the insurance carrier. Language was added to the subsection to clarify that the preauthorization requirement continues only until an injury or diagnosis denied by the insurance carrier is determined through dispute resolution or agreement of the parties to be part of the compensable injury.

Subsection (m) outlines when a health care provider has the right to pursue dispute resolution for an injury or diagnosis identified from this examination that the insurance carrier has denied. The subsection was restructured to clarify the circumstances when a health care provider may pursue an extent of injury dispute.

Subsection (n) indicates that once the insurance carrier accepts specific injuries and diagnoses as related to the compensable injury, treatment for these injuries and diagnoses shall not be reviewed for compensability.

General Comment: Some commenters expressed concern that this rule leaves the door open for the injury to expand and build when it appears the statute was intended to end the cycle where a clear-cut injury begins to "morph" into other regions of the body. The commenters suggested that the insurance carrier should be able to obtain a commitment from the treating doctor's findings, as to what the injury is and all parties should be bound to this assessment.

Agency Response: The Labor Code §408.0042 has not changed or superseded §409.021. Section 408.0042 provides a tool to the insurance carrier for defining the compensable injury at the time of the examination. However, injured employees are entitled to all health care reasonably required by the nature of the injury. There are circumstances where a compensable injury legitimately progresses beyond the initial diagnosis. Treatment for these new diagnoses cannot be restricted simply because the diagnosis had not developed at the time of the treating doctor's examination. If a carrier does not believe that the new diagnoses

are a legitimate progression of the compensable injury, it can dispute the diagnoses using the extent of injury process.

Comment: Some commenters believe this rule moves beyond the direction of Labor Code §408.0042(f), which says the Division may adopt rules "relating to requirements for a report under this section." Other commenters suggested the Division not attempt to micro-manage the process and only be involved in the process when there is a dispute.

Agency Response: The rule provisions only address the parameters of the process to ensure that the mandates of the Act are accomplished. For the process to operate efficiently, it is necessary that a uniform process and procedure be put in place to ensure all participants are aware of their rights and responsibilities, as well as to minimize the likelihood of disputes. The Division is only involved when dispute resolution is requested and the rule does not insert unnecessary regulatory intervention into the process. Certain requirements such as timeframes, content and distribution are necessary to minimize the potential for disputes and ensure a timely process. Labor Code §§402.00114(a), 402.021 and 402.061 provide the rationale, as well as the authority, for development of a uniform process.

TXCOMP Comment: Numerous commenters indicated concern about conducting business in TXCOMP at this point in time, from concern over certain participants not having internet or claim-specific access, to operational issues when the system is down, as well as confidentiality issues. Several commenters recommended that the Division develop a form that uniformly handles the process instead.

Agency Response: The Division acknowledges commenters' concerns and will not be implementing the treating doctor examination to define the compensable injury process electronically at this time. It is anticipated that as technology advances, this process may be incorporated into an electronic system to reduce paper usage and promote higher levels of service some time in the future. At this time, a paper process will be used. The Division declines to create a new form, but is specifying in the rule the information and contents required for the various submissions. This includes compulsory language, minimum required information, contents of reports, and distribution requirements. The information requested does not include any information that would not have been required by TXCOMP.

Subsection (a): Several commenters stated that because of scheduling restrictions, the insurance carrier will have to pay a minimum of 24 days of benefits before the examination may take place making it more cost effective to simply dispute the questionable portions of the claim or to deny the claim in its entirety. During this 24-day period, the health care provider may be providing treatment for non-compensable parts of the injury for which the provider may not receive reimbursement, which is not in keeping with the intent of the statute.

Agency Response: The Division disagrees. This examination does not have to occur before an insurance carrier may dispute all or part of an injury. Labor Code §408.0042 is just one tool available to insurance carriers to help define the compensable injury. There are potential advantages and disadvantages the insurance carrier must weigh to determine when and how to use this tool. If an insurance carrier identifies questionable portions of a claim, it may file a contest of compensability without the added expense and delay that may be associated with this examination. The only restriction is the requirement that the injured employee be at least eight days post-injury when the examination is requested. The requirement that an examination not be scheduled to occur earlier than 15 days from when the notice of examination is sent is to allow the injured employee time to receive sufficient notice that an examination has been scheduled to make arrangements for time off work, transportation, or other accommodations.

Subsection (b): Several commenters requested information on how an insurance carrier was to know if a change of treating doctor had been requested and expressed concern over the ability to verify the treating doctor. A commenter suggested adding the language included in the preamble of the proposed rule regarding use of the examination results.

Agency Response: An insurance carrier has the responsibility to communicate with the injured employee, the representative (if any), the injured employee's network and/or the Division (for non-network claims) to verify if a request to change doctor has been submitted. The Division concurs with the suggestion and has added language indicating the examination results may be used to define the compensable injury in situations where a change of treating doctor is requested after the notice of the examination has been sent by the insurance carrier.

Comment: Some commenters suggested that the burden should be on the injured employee to notify the insurance carrier of a change to treating doctor when a request for an examination has been sent. Numerous commenters recommended adding a subsection (b)(3) to reflect language from the preamble advising the injured employee not to change doctors during the treating doctor examination process. The commenters also suggested clarifying that requesting a doctor change after notice of the treating doctor examination was sent will not invalidate the examinations results and will not be a violation.

Agency Response: If the injured employee has requested to change treating doctors, he/she should notify the insurance carrier immediately upon receipt of notice of the examination. Other rules establish the procedures an injured employee must follow to change doctors. The Division reminds an insurance carrier that it remains responsible for exercising due diligence in ascertaining whether an injured employee has changed doctors prior to scheduling an examination. The Division does not have the authority to impose a moratorium on treating doctor changes, especially when there is a workers' compensation health care network involved; however, it has added the recommended language to the compulsory language required on the notice of examination. Subsection (b)(2) was changed to clarify when the report of the examination may be used.

Subsection (b)(1): Several commenters suggested the Division remove the administrative penalty associated with failure to verify the treating doctor, indicating the inability to use the report should be sufficient penalty.

Agency Response: Labor Code §408.0042(b) specifically provides "A medical examination . . . shall be performed by the employee's treating doctor." It is only reasonable that if the examination is to be performed by the treating doctor then it is necessary that the insurance carrier schedule the examination with the treating doctor and the language of subsection (b) has been changed to clarify this point. An insurance carrier has the duty to communicate with the injured employee, the representative (if any), the injured employee's network and/or the Division (for non-network claims) to verify if a request to change doctors has been submitted. The Division reminds insurance carriers that if the examination is scheduled with a doctor other than the treat-

ing doctor, then the insurance carrier is not in compliance with the Act as well as the rules and administrative penalties may be assessed. It is not necessary for the Division to specify in the text of a rule that it can take administrative action against insurance carriers for violations of the statute and/or rules and that language has been removed as unnecessary. The Division has been provided statutory authority to take enforcement action for violations of the statute and rules, as necessary.

Subsection (b)(2): A commenter indicated the word "compensable" should be inserted before "injury" in the second sentence of this paragraph since it provides that the results of an improper examination shall not be used.

Agency Response: The Division agrees and has made the change.

Subsection (c)(4)(A): A commenter suggested that the compulsory language required in the notice of examination be changed to comply with plain language requirements, specifically to clarify for the injured employee the meaning of "compensable." The commenter pointed out this subsection provides compulsory language that informs the injured employee of rights and responsibilities related to this examination. The commenter believes that since this letter is notification that the examination has been scheduled, the sentence should be changed to an affirmative directive.

Agency Response: The Division agrees and has made the suggested changes. The rule has been changed to indicate the examination's purpose is to define the injuries and diagnoses "that resulted from the work-related incident or activities."

Subsection (c)(4)(C): A commenter pointed out that no penalty amount is defined for an injured employee that fails to attend this examination without good cause. The commenter questions whether a specific penalty amount should be identified, and if so, who would administer the penalty.

Agency Response: The Division will make a determination as to whether there was good cause and will assess any penalty found to be appropriate based on Labor Code §408.0042, §415.021, and Division rules.

Comment: A commenter suggested that language directing that the examination be rescheduled within seven days of the original examination date be included in the notice requirements of subsection (c)(4)(C).

Agency Response: The Division agrees that the timeframe for rescheduling the examination is an important requirement that the injured employee should be made aware of and has made the suggested change.

Subsection (e): A commenter suggested the penalty for failure to attend this examination be consistent with the penalties for missed required medical examinations and designated doctor examinations, allowing an insurance carrier to stop temporary income benefits until the injured employee attends.

Agency Response: The Division disagrees. Application of this form of penalty for failing to attend the treating doctor examination to define the compensable injury was not included in the statute. The Division points out the legislature amended the penalties associated with failure to attend examinations. Temporary income benefits may only be stopped if an injured employee fails to attend a designated doctor appointment without good cause. This penalty option was removed from required medical examinations.

Subsection (f)(3): A commenter suggested when a doctor includes a diagnosis that is typically an ordinary disease of life, the doctor must describe how the condition has been worsened by the compensable injury in his report. Another commenter expressed favor for requiring a treating doctor to describe the mechanism of injury and how the diagnoses and injuries the doctor is treating were caused by the mechanism of injury.

Agency Response: The Division agrees this will be valuable information and has changed subsection (f)(3) to indicate the report shall explain how the mechanism of injury caused a worsening or exacerbation of the condition when the doctor identifies an aggravation of a preexisting condition, which includes an ordinary disease of life.

Comment: A commenter indicated there was no provision in the rule that a doctor cannot withhold a known diagnosis or what the penalty would be if such occurred.

Agency Response: Labor Code §408.0042(c) requires a doctor to list all injuries and diagnoses related to the compensable injury. Section 126.14 has been changed to clarify this requirement in subsection (f)(3). The Division reminds doctors that failure to accurately report all diagnoses identifiable at the time of the examination could be an administrative violation.

Subsection (g): Some commenters noted that the Division acknowledged their concerns regarding the time necessary to order and complete diagnostic testing by increasing the testing timeframe from seven to 10 days in the proposed rule. Some of the commenters recommended the Division consider a longer period of 14 days and one recommended 20 days.

Agency Response: The Division wishes to clarify that the rule provides for 10 working days, which is equivalent to two full business weeks, for testing to be performed. Changing the period to 14 calendar days from 10 working days could shorten rather than lengthen the period for testing, for example when there are intervening holidays. Based on comments received, a period of 10 working days appears to be sufficient time to order and complete diagnostic testing.

Comment: Some commenters indicated that diagnostic testing under this provision should adhere to the same preauthorization standards as in any other circumstance to determine if the testing is clinically indicated and that the insurance carrier will need to be notified of any testing recommendation to provide the authorization.

Agency Response: The Division disagrees. It is necessary to eliminate the preauthorization requirement for diagnostic testing required to define the compensable injury. The treating doctor may require tests to confirm or rule out suspected diagnoses. Denial of preauthorization for diagnostic testing could prevent the treating doctor from defining the injury.

Comment: Some commenters expressed concern that doctors may include every diagnosis they can think of because it may be needed later. The commenters feel that this will lead insurance carriers to dispute more diagnoses on claims that would not necessarily have had a dispute arise.

Agency Response: The Division reminds participants that the doctor will need to confirm the injuries and diagnoses that are being defined. A suspected injury or diagnosis cannot be included. The treating doctor shall list only specific, confirmed injuries and diagnoses that are part of the compensable injury. If the doctor does document confirmed injuries, the insurance carrier should

deny any that it feels are not related to the compensable injury so that the dispute may be resolved earlier in the claim process.

Subsection (j): A commenter suggested the language in subsection (j) be changed to state, "within 60 days of the date written notice of the injury or diagnosis is received . . ." Another commenter suggested after "within the later of 60 days of the date written notice of the injury" adding "or the date the diagnosis is received."

Agency Response: The Division declines to make the suggested changes. It is not necessarily notice of a specific diagnosis that triggers the 60-day period. It is notice of an injury that triggers the 60-day period. The insurance carrier shall respond to the treating doctor's report within 10 working days of receipt of the treating doctor's report unless the 10 working days expires prior to the end of the 60 days after receipt of the written notice of injury.

Comment: A commenter expressed concern that 60 days is too long a time to make a determination on what is being accepted as the compensable injury and questioned if this is in conflict with subsection (j)(1) and (2).

Agency Response: The Division believes there may have been some confusion regarding the time period for an insurance carrier to deny injuries and diagnoses on the treating doctor's report. It will only be in those cases when the examination is requested very early in the claim and the 10 working day period expires prior to the 60th day after the date written notice of the injury was received, that the period is extended. The period for responding to the treating doctor's report is extended to the 60th day so it will not interfere with the statutory timeframe for investigating and accepting the compensability of the claim.

There is no conflict within subsection (j). The Division reads Labor Code §408.0042 and this rule in concert with §409.021. A key element of statutory construction is that if various statutes can be read in harmony with each other so that all provisions can be given effect then that is the interpretation that should be utilized. That is what has been done in this situation. There is no conflict between Labor Code §408.0042 and §409.021 and this rule and full effect can be given to all. Additionally, the subsection indicates the insurance carrier shall not begin denying medical payments on the basis of compensability until it has given written notice that it is denying the compensability of the diagnosis for which the treatment was rendered, in accordance with §124.3(e) and Insurance Code §1305.153(e).

Subsection (j)(1): Some commenters questioned the purpose of subsection (j)(1) and suggested deletion. They contend it is inconsistent with the changes made to the statute by House Bill 7 and re-creates a "Downs"-like situation (Continental Casualty Co. v. Downs, 81 S.W. 3d 803 (Tex. 2002)) as well as a disincentive for the insurance carrier to use a tool created by the Legislature for them. A commenter suggested that if it was the Division's concern that subsection (j)(1) may be used to revive a waived injury, a wording change that simply says, "the insurance carrier may not use this examination to circumvent its responsibilities to dispute compensability under §409.021" should be sufficient. A commenter noted the insurance carrier must be fairly informed of the injury it is waiving into before it can be compelled to accept that injury under the doctrine of waiver and suggested the rule has ignored the 'written notice' requirement for a more subjective 'reasonably discoverable' standard. Another commenter stated that it was not the insurance carrier's burden to deny non-discovered, non-reported injuries.

Agency Response: The Division has modified subsection (j)(1) to provide that no injury or diagnosis, established under Labor Code §409.021, can be taken away by a subsequent definition of the injury under this section. The Division disagrees with the assessment that the rule is inconsistent with changes made by House Bill 7 because Labor Code §409.021 must be read in concert with new Labor Code §408.0042. Neither §408.0042 nor this section creates a waiver. Although there is no waiver reference in §408.0042, §409.021, which is applicable to §408.0042, states the insurance carrier has specific responsibilities and deadlines with regard to liability for a compensable injury. The treating doctor examination to define the compensable injury process may not be used to avoid these responsibilities or correct an omission. The Division is not attempting to expand on provisions spelled out in other rules; rather it is merely giving full effect to the various provisions of the Act and showing how other rules work in concert with this provision. The subsection clarifies that the intent of the paragraph is to give full effect to both §§409.021 and 408.0042 and the results defined by the treating doctor examination cannot diminish any injury established by a waiver determination. The Division concurs that the insurance carrier must receive written notice of an injury to trigger its duty to investigate the claim and a reasonable investigation would fairly inform the insurance carrier of the injuries. The commenter is incorrect in stating the insurance carrier has no duty to investigate the injury.

Comment: Some commenters disagreed with the use of the words "symptoms and conditions" as these words do not qualify as injuries under the Act and Labor Code §408.0042 addresses only "injuries and diagnoses." Some commenters recommended the rule be confined to the scope of the statute and these terms be removed.

Agency Response: The Division has removed the terms "symptoms and conditions" from subsection (j)(1) but notes that symptoms and conditions are compensable if they are related to the compensable injury.

Comment: Several commenters stated that subsection (j) implies that a causative link between work and the injuries and diagnoses did not have to be made, exposing insurance carriers to liability for every health condition ever suffered by the injured employee. As a result, insurance carriers would be inclined to generate blanket denials on every claim, which conflicts with the intent of House Bill 7.

Agency Response: The Division clarifies that the purpose of subsection (j)(1) is to clarify that the findings of a treating doctor examination do not change compensability established as a result of waiver under Labor Code §409.021.

Subsection (j)(2): Several commenters expressed concern over the requirement that insurance carriers not deny reimbursement for medical care on the basis of compensability prior to filing a written denial of compensability. Their concern was not only about making an insurance carrier liable for non-compensable medical costs, but also that a doctor may increase the amount of treatment provided during this "free" period when it is anticipated that the insurance carrier will deny a condition. Several commenters suggested insurance carriers be given at least 10 days from the date the doctor's report is received, to evaluate the report, before the insurance carrier is required to pay for medical treatment.

Agency Response: An insurance carrier has 10 working days to evaluate the treating doctor's report before it must accept all

the injuries or dispute specific diagnoses. The insurance carrier must deny the compensability of a diagnosis before it may deny reimbursement for treatment rendered for that diagnosis on the basis that it is non-compensable. This is consistent with existing rules and statute.

Subsection (k): A commenter recommends adding a requirement that the injured employee has only 30 days after receiving the denial to request a benefit review conference to ensure that disputes are brought early for resolution.

Agency Response: The Division believes it is unnecessary at this time to address a timeframe for requesting a benefit review conference. The Division also notes that the proposed rule did not propose a timeframe for this request and it is unable to make this type of change in the adopted rule.

Comment: Some commenters recommended that the insurance carrier be allowed to notify the treating doctor of any denials of diagnoses identified from this examination by any means, such as by phone, and not provide written notice.

Agency Response: The Division disagrees. An insurance carrier must provide the treating doctor with written notice when specific injuries or diagnoses, identified in the "exam to define the compensable injury" report, have been denied. The Division encourages written notice to be transmitted by facsimile or electronic transmission to the treating doctor when the doctor has the means to receive such transmissions.

Subsection (l): Several commenters requested clarification of the services/treatments that require preauthorization under §§126.14 and 134.600. Specifically, the commenters questioned whether all services listed in §134.600 require preauthorization regardless of the treating doctor exam; and whether all other services not subject to §134.600 require preauthorization under §126.14. One commenter asked the Division to reconsider this concept as it may result in significant costs associated with preauthorization.

Agency Response: For non-network claims, all the services listed in §134.600 must be preauthorized regardless of the results of a treating doctor examination. In network claims, §134.600 is not applicable and each network will establish its own list of services that require preauthorization. However, in both network and non-network claims, preauthorization is not required for diagnostic tests ordered by the treating doctor to establish a diagnosis under subsection (g).

Regardless of any network affiliation, all services and treatments related to a denied injury or diagnosis identified in the treating doctor's examination under §126.14 require preauthorization. These preauthorization requirements are required by Labor Code §408.0042(d).

Comment: A commenter stated that it is not reasonable to provide a preauthorization process for treatment of injuries denied by the insurance carrier since preauthorization cannot comment on compensability.

Agency Response: The statutory provision that precipitated this rule requires the insurance carrier to accept all diagnoses identified in the examination as related to the compensable injury or to dispute the determination of a specific diagnosis. It goes on to require preauthorization for treatment of any diagnosis that was disputed to allow the possibility of care while dispute resolution is in process. The rule has been written to reflect the statutory language.

Subsection (m): A commenter suggested that the Division clarify that the treating doctor cannot later dispute his own assessment.

Agency Response: The health care provider may only pursue an extent of injury dispute under Labor Code §408.0042 or as a sub-claimant under Labor Code §409.009. There is no provision that permits a treating doctor, or a subsequent treating doctor, to change the contents of a previously filed report, changing the definition of the compensable injury. However, in accordance with §408.021, there can be no provision that keeps additional injuries from being established as part of the compensable injury.

Comment: A commenter questioned why a provider should be allowed to request a benefit review conference for an extent of injury dispute if the injured employee is not pursuing and the provider has not incurred charges.

Agency Response: Labor Code §408.0042(d) specifically allows an affected health care provider to file an extent of injury dispute if an insurance carrier denies preauthorization because the treatment is for an injury unrelated to the compensable injury. However, subsection (m)(1) has been changed to clarify that a health care provider may not request a benefit review conference to address an extent of injury dispute if the injured employee has already requested a benefit review conference for this issue.

Comment: A few commenters suggested a health care provider may only request a benefit review conference when the insurance carrier denies preauthorization based on an extent of injury dispute. The commenters noted that a dispute regarding medical necessity is subject to the provisions of §133.308 not Chapter 141.

Agency Response: The Division agrees that a health care provider may only request a benefit review conference under Labor Code §408.0042(d) to address an extent of injury denial. Questions related to medical necessity are handled through medical dispute resolution.

Subsection (n): A number of commenters requested the Division add a provision allowing an insurance carrier to contest extent of injury of an accepted condition at a later time if newly discovered evidence was obtained. They suggested the rule was too absolute in this area and the statute does not provide the Division with the authority to limit the insurance carrier's ability to raise an extent issue.

Agency Response: The Division clarifies that the insurance carrier may reopen the issue of compensability for the claim as a whole as provided by Labor Code §409.021, but not for extent of injury issues. Labor Code §408.0042 states treatment for injuries or diagnoses that have been accepted are not subject to review for compensability but may be reviewed for medical necessity. Allowing the insurance carrier to contest an injury after accepting that injury or diagnosis would negate the intent of the provision to identify and resolve disputes early in the claim.

Comment: A commenter stated that subsection (n) is not mandated by statute. The commenter asserted that it must be made clear that while an insurance carrier is liable for accrued medical benefits after the insurance carrier has accepted some or all of the injuries or diagnoses in the treating doctor's report, the insurance carrier may subsequently dispute those injuries and not be liable for future treatment.

Agency Response: The Division disagrees as the subsection is mandated by Labor Code §408.0042(e), which provides that any treatment for an injury or diagnosis that is accepted by the insurance carrier may not be reviewed for compensability, only

for medical necessity. It is accepted that this also allows review for compliance with fee guidelines. The purpose of this provision is to give all participants the opportunity to establish the nature of the injury and to resolve disputes over the nature of the injury early in the claim. If the insurance carrier had the opportunity to subsequently dispute accepted conditions, it would negate the purpose of the provision.

For, with changes: Employers Claims Adjustment Services, Inc.; Texas Association of School Boards; Lockheed Martin Aeronautics Co.; Hammerman and Gainer; Flahive, Ogden and Latson; Office of Injured Employee Counsel; American Insurance Association; Texas Mutual Insurance Co.; The Boeing Co.; Insurance Council of Texas; Medical Equation, Inc.; Property Casualty Insurers of America; Association of Fire and Casualty Insurers of Texas. Neither for or Against: Texas Medical Association; TIRR Systems; Fair Isaac Corp.; Healthsouth.

The new section is adopted under the Labor Code §§408.0042, 402.00111, and 402.061. Section 408.0042 provides for a medical examination by the treating doctor to define the compensable injury. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

§126.14. Treating Doctor Examination to Define the Compensable Injury.

(a) On request of the insurance carrier, an injured employee is required to submit to a single examination per workers' compensation claim for the purpose of defining the compensable injury. The examination:

(1) shall not be requested prior to the eighth day after the date of injury, and

(2) shall be scheduled to occur no earlier than 15 days and no later than 30 days from the date the notice of examination is sent to the injured employee.

(b) The insurance carrier shall schedule the examination with the injured employee's treating doctor. If a request to change treating doctor has been filed by the injured employee, the insurance carrier shall not schedule this examination until after the treating doctor change has been processed.

(1) An insurance carrier that schedules the examination with a doctor other than the injured employee's treating doctor shall be liable for reimbursement of the examination and testing.

(2) The examination findings may only be used to define the compensable injury when provided by the treating doctor of record at the time the notice of examination was sent to the injured employee. The report by a doctor other than the treating doctor of record at the time the notice of examination was sent shall not be used for the purpose of defining the compensable injury.

(c) The insurance carrier shall send the injured employee a written notice of examination. A copy of a notice of examination shall be sent to the injured employee's representative (if any). The notice of examination, at a minimum, shall include:

(1) general information identifying the claim;

(2) the name of the treating doctor;

(3) the date, time, and the location of the scheduled examination with the treating doctor named; and

(4) the following statements in a bold font equal to the font size in the main body of the notice:

(A) The insurance carrier requests that you, the injured employee, attend a single examination for this workers' compensation claim for the sole purpose of defining the injuries and diagnoses that resulted from the work-related incident or activities. Section 408.0042 of the Labor Code requires you to attend.

(B) If the doctor named in this notice is not your treating doctor, immediately contact the insurance carrier (add name and phone number of contact person) or the Texas Department of Insurance, Division of Workers' Compensation. You are not required to attend this examination with a doctor other than your treating doctor, unless the doctor was your treating doctor on the day the notice of examination was sent to you. Once you receive notice of this examination, you should not request to change treating doctor until after the examination has been conducted.

(C) You are responsible for contacting your doctor to reschedule the examination if you have a conflict with the date and time that has been scheduled for you. The rescheduled examination shall take place within seven days of the originally scheduled date or the doctor's first available appointment date. If you fail to attend the examination at the time scheduled or rescheduled without good cause, an administrative penalty may be assessed.

(d) If a scheduling conflict exists, the injured employee shall immediately contact the treating doctor to reschedule the examination. The examination must be rescheduled to take place within seven working days of the original examination or the doctor's first available appointment date.

(e) An injured employee who fails or refuses to appear at the time scheduled for an examination may be assessed an administrative penalty unless good cause exists for such failure. An injured employee who fails to submit to an examination at the insurance carrier's request does not commit an administrative violation if the doctor named on the notice of examination is not the injured employee's treating doctor.

(f) The treating doctor shall submit a narrative report after the conclusion of the examination. The report shall contain, at a minimum:

(1) general information that identifies the claim;

(2) a description of the mechanism of injury;

(3) a list of all specific, confirmed diagnoses, including ICD-9 codes and the narrative description, that the doctor considers to be related to the compensable injury. The explanation shall describe how the mechanism of injury is a cause of each diagnosis. If the doctor identifies an aggravation of any pre-existing condition, including an ordinary disease of life, the explanation shall describe how the mechanism of injury caused a worsening, acceleration, or exacerbation of that pre-existing condition; and

(4) a list of each diagnostic test performed, if required to establish a diagnosis, including an explanation of why it was appropriate to perform each test to define the compensable injury.

(g) Any diagnostic testing necessary to define the compensable injury shall be performed no later than 10 working days after the examination and is not subject to the preauthorization requirements of either §134.600 of this title (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care) or a worker's compensation health care network under Insurance Code Chapter 1305 or Chapter 10 of this title (relating to Workers' Compensation Health Care Networks).

(h) The treating doctor shall submit a copy of the narrative report to the insurance carrier, the injured employee, and the injured employee's representative (if any) no later than 10 days after the conclusion of the examination. If diagnostic testing is required to define the compensable injury, the filing of the report is extended to seven days after the conclusion of the testing.

(i) A treating doctor may bill, and the insurance carrier shall reimburse, for an examination performed under this section.

(1) Treating doctors shall bill for the examination using the Healthcare Common Procedure Coding System (HCPCS) Level I code, Evaluation and Management Section, for work-related or medical disability evaluation services performed by a treating physician. A Division modifier of "TX" shall be added to the Level I code.

(2) Reimbursement for the examination shall be $350. Reimbursement for the report is included in the examination fee. Doctors are not required to submit a copy of the report with the bill if the report was previously provided to the insurance carrier.

(3) Testing necessary to define the compensable injury shall be billed using the appropriate billing codes and reimbursed in addition to the examination fee. Reimbursement for testing shall not be retrospectively reviewed on the basis of compensability if the doctor has documented a rationale for why the testing was necessary for defining the compensable injury.

(j) An insurance carrier shall review the injuries and diagnoses identified in the treating doctor's report. If a specific injury or diagnosis is not accepted as part of the compensable injury, the insurance carrier shall file a denial in accordance with §124.2 of this title (relating to Carrier Reporting and Notification Requirements) within the later of 60 days after the date written notice of the injury is received or within 10 working days of receipt of the treating doctor's report. In addition to the distribution requirements outlined in §124.2 of this title, a copy of the written denial shall be sent to the treating doctor by fax or electronic transmission unless the recipient does not have the means to receive such transmission in which case the notice shall be personally delivered or sent by mail.

(1) A compensable injury established as a result of a waiver determination under Labor Code §409.021, is not affected by a definition of the compensable injury under §408.0042.

(2) The insurance carrier shall not deny reimbursement for treatment of any injury or diagnosis listed in the treating doctor's report on the basis of compensability or relatedness prior to filing a denial as required by §124.2 of this title.

(k) The injured employee may initiate a request for a benefit review conference in accordance with Labor Code §410.023 and §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference) upon receiving a denial regarding specific injuries or diagnoses.

(l) If the insurance carrier denies an injury or diagnosis identified in this examination, all treatment for that injury or diagnosis must be preauthorized prior to treatment occurring. For the treating doctor, the insurance carrier's denial is effective on the date the written notice of denial is received by the doctor. The preauthorization requirement continues until the injury or diagnosis is determined to be part of the compensable injury through dispute resolution or agreement of the parties.

(m) A health care provider may request a benefit review conference, in accordance with §141.1 of this title, to address an extent of injury question if a request for preauthorization has been denied for treatment of an injury or diagnosis that was denied as unrelated to the compensable injury under this section; unless:

(1) the injured employee has already requested a benefit review conference to pursue the extent of injury denial, or

(2) an agreement, filed in accordance with §147.4 of this title (relating to Filing Agreements with the Commission, Effective Dates) has been entered into by the insurance carrier and injured employee establishing the insurance carrier's liability on the disputed issues.

(n) Once the treating doctor has defined the compensable injury and the insurance carrier has accepted injuries or diagnoses as related, the insurance carrier shall not review treatment of the accepted injuries and diagnoses for compensability.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 19, 2006.

TRD-200603369
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: July 9, 2006
Proposal publication date: February 3, 2006
For further information, please call: (512) 804-4288

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) adopts the repeal of the following sections of Chapter 800 relating to General Administration:

Subchapter B. Allocations, §800.73 and §800.74

The Commission adopts the following new sections of Chapter 800 relating to General Administration:

Subchapter B. Allocations, §800.73 and §800.74

The Commission adopts amendments to the following sections of Chapter 800 relating to General Administration:

Subchapter B. Allocations, §§800.52, 800.71, and 800.75

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 800 rule change is to establish an integrated policy for the deobligation and reallocation of Local Workforce Development Board (Board) administered funds. This policy will further the Commission's support of an integrated workforce system and will promote cost benefits through improved, administrative efficiencies in the local workforce development areas (workforce areas).

In addition, amendments are adopted to reflect changes pursuant to House Bill (HB) 2604, enacted by the 79th Texas Legislature, Regular Session (2005), which directs the transfer of the Disabled Veterans' Outreach Program and Local Veterans' Employment Representative grant from the Agency to the Texas Veterans Commission.

The adopted changes fulfill statutory requirements embodied in Texas Labor Code §301.001, as amended, establishing the Commission to:

(1) operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs;

(2) standardize, simplify, and make more consistent the procedure of determining amounts for deobligation and reallocation;

(3) streamline and achieve administrative efficiency and effectiveness in order to foster the integration of workforce development programs, minimize administrative burdens and costs, and maximize the proportion of funding available for services; and

(4) delete various obsolete provisions, add to various provisions to make references more accurate and complete, and make various technical corrections.

Additionally, Texas Labor Code §302.002 directs the Agency's executive director to:

(1) consolidate the administrative and programmatic functions of the programs under the authority of the Commission to achieve efficient and effective delivery of services; and

(2) contract with the Boards for program planning and service delivery.

Based on the Commission's commitment to an integrated workforce development system-wherein siloed funding streams and diverse programs are blended into a functionally unified whole-the Commission requested and received two waivers from the U.S. Department of Labor (DOL). The purpose of the waivers was to align the policies for the deobligation and reallocation of Board-administered funds. By standardizing and making the procedure of deobligation and reallocation more consistent, the Commission promotes the integration and administration of workforce development programs.

The waivers allow the Commission to make midyear deobligations and reallocations in order to better manage workforce funding. Based on the approved waivers, the rules have been amended to allow deobligations based on an evaluation of a Board's expenditures, pertinent performance data, and a reasonable cost per participant in months five through eight of the appropriate program year for each funding source, and to integrate the processes for the reallocation of funds. This process is more responsive and allows the Commission to better address the changing needs of workforce areas. Should any related federal waivers expire, the Commission will be subject to federal requirements in effect at that time.

The Commission believes that having its actions clearly delineated in rule provides the best opportunity for the Boards and the Commission to have a common understanding of how expenditures and performance are reviewed, and the impact of the review on potential deobligations. Boards have consistently performed well, ensuring that services are available throughout their workforce areas, but at times the expenditures and performance indicate that the formula for the allocation may be lagging behind current local economic conditions. The Commission encourages Boards to resize their program and, where appropriate, make voluntary deobligations.

As noted, Boards' performance has permitted the Commission to minimize deobligations. Over the past six years, the Commission has deobligated less than two-thirds of one percent of block grant allocations to workforce areas. The Commission's record of carefully considered, judicious, and extremely modest deobligations further serves to promote its guiding principle: the most successful deobligation policy results in no deobligations, because services are being provided and funds expended in the workforce area to which they are allocated.

The Commission embraces this concept and supports Boards in their efforts to meet employers' needs for qualified workers. The adopted rules establish clear standards for potential deobligations and reallocations to further foster ongoing and substantive communications between the Commission in its oversight role, and the Boards in their role as stewards of the funds. The adopted rule establishes a common framework for measuring the local service delivery system against the needs-based formulas established by statute and regulation. Moreover, the adopted rule provides a significant opportunity for the Boards to offer information that informs the Commission about any activities or changes in the local economy that might mitigate a deobligation.

The adopted rules further support the Commission's goal of an integrated workforce system and allow for increased efficiency in meeting the workforce development needs of employers and job seekers.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive editorial changes are made throughout Subchapter B of this chapter that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. ALLOCATIONS

General Comments

Comment: One commenter thanked the Commission for the opportunity to comment and expressed support of the rule changes.

Response: The Commission appreciates the comment.

§800.52. Definitions

The Commission adopts new §800.52(10), the definition of "relative proportion of the program year."

§800.71. General Deobligation and Reallocation Provisions

The Commission adopts the amendment of §800.71(b)(7) by removing the reference to "Veterans' Employment and Training" as a category of funding to reflect the direction of HB 2604. Therefore, §§800.71(b)(8) - 800.71(b)(10) are renumbered as new §§800.71(b)(7) - 800.71(b)(9), respectively.

§800.73. Child Care Match Requirements and Deobligation

The Commission adopts the repeal of §800.73, Expenditure, Local Match, and Obligation Levels, and adopts new §800.73, Child Care Match Requirements and Deobligation, which delineates the policy to which Boards must adhere for securing local child care matching funds, as well as the policy for potential deobligations of federal child care funds that remain unmatched after the fourth month of the program year.

§800.74. Deobligation of Funds

The Commission adopts the repeal of §800.74 and adopts new §800.74, which establishes an integrated deobligation policy. Currently, with the exception of WIA formula allocated funds, funds may be deobligated at the end of the third and ninth months of the program year. Federal Trade Adjustment Assistance Act funds have an additional point for deobligation at the sixth month. The Commission believes the current three-month point for deobligation occurs too soon during the program year to fully analyze the relationship between expenditures, service delivery design, and performance-and the ninth month is too late in the program year to adequately align reallocations, service delivery design, and enhancements to performance. Therefore, for all Board-administered funds including WIA formula allocated funds, the Commission adopts the replacement of the current three-month, six-month, and nine-month deobligation points with a new midyear deobligation period that begins at the end of the fifth month and continues through the end of the eighth month in the first year of funds availability. The adopted deobligation of Board-administered funds, if applicable, would be based on expenditures, pertinent performance data, and related cost per participant data occurring during the fifth month and continuing through the eighth month. For WIA formula funds, the Commission will review data during the first program year of funds availability in the appropriate program year.

Comment: One commenter stated that obligations should be considered in this rule because often training institutions do not submit invoices that align with benchmarks. The commenter asked how the "cost per participant" would be determined, whether Boards would be benchmarked against one another, and how pertinent performance data would be determined. Additionally, the commenter stated that the "pertinent performance data" and the "related cost per participant data" is too vague, and stated that the Boards did not have input into the definition or methodology.

Response: The Commission appreciates that Boards face challenges with the late billing procedures of many community colleges. The Commission, however, believes that the rules address these challenges by allowing Boards to offer supporting documentation-such as information regarding obligations, input on performance issues, and local policies or anomalies affecting the cost per participant-prior to any action the Commission might take regarding a deobligation.

Further, the Commission's intent is not to benchmark one Board against another. The Commission believes that the rule is clear in its description of how a reasonable cost per participant is established. The rule sets out four criteria for determining reasonableness of per participant costs, which support an understanding of each Board's service delivery system as well as any recent actions that may affect a Board's formula allocations and relevant local factors.

Because the rule applies to well-defined funding streams, which include Child Care, WIA Formula funds, and other Board-contracted funds, the rule is clear that the review of pertinent or applicable performance is associated with the funding stream that has failed to meet the expenditure benchmark.

It is the Commission's intent to establish a clear understanding of the definitions and methodology for the recommendations regarding potential deobligations of certain funding streams. The Commission further believes that the proposed rules provided Boards with the greatest opportunity to provide critical information.

Additionally, the adopted rules set forth another deobligation point for WIA funds at the end of the first year of funds availability if Boards have not expended 80% of each category of WIA formula funds.

Boards will be notified by the Commission of any potential deobligations and will be encouraged to voluntarily deobligate any excess funding or provide justification for projected expenditures, as set forth in the adopted rule.

For Board-administered funds other than WIA formula allocated funds, the Commission will base a potential deobligation on each Board's expenditure of an amount equal to 90% of the corresponding proportion of the category of funds for each of the previous three months. For WIA funds, the Commission will base a potential deobligation on each Board's expenditure of an amount equal to 80% of the corresponding proportion of the category of WIA formula allocated funds for each of the previous three months.

Funds contracted within sixty days prior to a period during which the Board may be subject to deobligations will not be subject to deobligation.

It is important to note that the Commission currently has established an incentive for reaching an 80% expenditure benchmark for WIA formula allocated funds. Boards that reach the 80% expenditure threshold at the end of the first program year are eligible to receive the Commission's Statewide Activity funds, some of the most flexible federal dollars available for unique local initiatives.

If a Board fails to meet the 90% or 80% expenditure benchmarks for any three-month period, the Commission will review a Board's performance for the appropriate category of funds, and the reasonableness of the cost per participant for that category of funds. In reviewing a Board's performance, the Commission will determine whether 95% of the applicable performance measure has been achieved. Additionally, the Commission will determine whether a Board has achieved a reasonable cost per participant, based upon the factors set forth in §800.74(d)(2)(A) - (E).

The adopted rule clarifies that the amount the Commission may deobligate is no greater than the difference between a Board's actual expenditures as of the end of the third consecutive month in which a Board has failed, and the relative proportion of the program year's expected expenditures.

Recognizing that an individual workforce area's service delivery system presents unique opportunities and challenges, the Commission is permitting an opportunity for Boards to justify their current and projected expenditure levels, pertinent performance data, and service levels prior to the Commission's consideration of a potential deobligation of Board-administered funds, including WIA formula allocated funds.

§800.75. Reallocation of Funds

Currently, funds administered by the Commission, with the exception of WIA formula allocated funds, are reallocated to eligible workforce areas based on criteria in §800.75(a). A separate method for reallocating WIA formula allocated funds has been employed to address statutory requirements set forth in WIA §128 and §133. Under WIA, all workforce areas not subject to a deobligation receive amounts available for reallocation. Unlike other Board-administered funds, no consideration has been given to a workforce area's demonstrated need, capacity, or current or past performance.

A waiver granted by the DOL waives federal requirements set forth in WIA §128 and §133 and authorizes the Commission to reallocate recaptured WIA formula funds to workforce areas using the same procedures and criteria the Commission employs for other Board-administered funds. The waiver will promote maximum expenditure of recaptured funds, enabling the Commission to streamline administrative practices and further enhance the Texas workforce system's effectiveness in meeting the needs of employers and job seekers.

Therefore, the Commission adopts the amendment of §800.75(a) by including WIA formula allocated funds. The Commission also adopts the removal of §800.75(a)(2) and §800.75(b)(3) because these paragraphs are no longer applicable. The Commission seeks to facilitate the maximum expenditure of deobligated Board-administered funds through the redistribution of WIA funds to workforce areas that have achieved not only targeted expenditure levels but also have met established performance targets. Redistributing funds based solely on whether a Board achieves its expenditure target does not fully address performance issues-such as whether the Board has met employers' needs for a highly skilled and job-ready workforce.

The Commission also adopts the amendment of §800.75(a) and §800.75(b)(1) by removing the reference to "Veterans' Employment and Training" funds to reflect the direction of HB 2604. Additionally, the Commission adopts §800.75(b)(1) to include WIA formula allocated funds.

Effective Date

The Commission adopts that the provisions regarding the deobligation of WIA formula allocated funds based upon 80% of the relative proportion of the program year shall be in effect starting with Program Year 2006 funds (beginning July 1, 2006). The Commission further adopts that the provisions regarding the deobligation of non-WIA formula allocated funds based upon 90% of the relative proportion of the program year shall be in effect starting with Program Year 2007 funds (beginning October 1, 2006).

COMMENTS WERE RECEIVED FROM:

Shawna Chambers, on behalf of Workforce Solutions Brazos Valley

Janie Bates, on behalf of Workforce Texoma

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.52, 800.71, 800.73 - 800.75

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603421
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: July 12, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 475-0829

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40 TAC §800.73, §800.74

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 2006.

TRD-200603423
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: July 12, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 475-0829

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 95, §95.100, Account Insurance; §95.200, Appointment of Liquidating Agent; §95.300, Share and Deposit Guaranty Credit Union; §95.301, Authority for a Guaranty Credit Union; §95.302, Powers; §95.303, Subordination of Right, Title, or Interest; §95.304, Accounting for Membership Investment Shares; §95.305, Audited Financial Statements; Accounting Procedures; Reports; and §95.306, Requirements of Member Credit Unions of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to info@tcud.state.tx.us. The deadline for comments is August 31, 2006.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-200603465
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 27, 2006

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §139.35(b)

Classification	Violation	Citation	Suggested Sanctions
Administrative	Failure to return seal imprint and/or portrait	§133.97(e), (f); §137.31(a)	Reprimand/$250.00
	Failure to report: change of address or employment, or of any criminal convictions	§137.5	Reprimand/$100.00
	Failure to respond to Board communications	§137.51(c)	Reprimand/$500.00
	Failure to include "inactive" or "retired" representation with title while in inactive status	§137.13(f)	Reprimand/$250.00
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation/$3,000.00
	Failure to exercise care and diligence in the practice of engineering	§137.55(b), §137.63(b)(6)	1 year probated suspension/$1500.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension/ $3,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension/$3,000.00
	Felony Conviction with incarceration	§139.43(a)	Revocation/$3,000.00
	Fraud or deceit in obtaining a license	§1001.452(a)(2), §1001.453	Revocation/$3,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year probated suspension/$1,500.00
	Enter into a business relationship which is in violation of §137.77(Firm Compliance)	§137.51(d)	1 year probated suspension/$1,000.00
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§137.63(a)	2 year probated suspension/$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful.	§137.57(a) and §137.57(b)(1) or (2)	2 year suspension/ $2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§137.57(a) and §137.57(b)(3)	1 year probated suspension/$1000.00
	Conflict of interest	§137.57(c), (d)	2 year suspension/ $2,500.00
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year probated suspension/$2,500.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year probated suspension/$2,500.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year probated suspension/$2,500.00
	Offer or practice engineering while license is expired or inactive	§137.7(a), §137.13(g)	1 year probated suspension/$500.00
	Failure to act as a faithful agent to their employers or clients	§137.63(b)(4)	1 year probated suspension/$1,500.00
	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand/$1,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year probated suspension/$1,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year probated suspension/$1,500.00
	Aiding and abetting unlicensed practice or other assistance	§137.63(b)(3), §137.63(c)(1)	3 year probated suspension/$3,000.00
	Failure to report violations of others	§137.55(c)	Reprimand/$1,500.00

	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand/$1,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand/$1,500.00
	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year probated suspension/$1,500.00
	Competitive bidding with governmental entity	§137.53	Reprimand/$1,500.00
	Expressing an opinion before a court or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion.	§137.59(c)	2 year suspension/ $2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§137.17(p)(2), (3)	2 year suspension/ $2,500.00
	Action in another jurisdiction	§137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
Improper use of Seal	Failure to safeguard seal	§137.33(d)	Reprimand/$1,000.00
	Failure to sign, seal, date work	§137.33(e), (f), (h), §137.35(a), (b)	Reprimand/$500.00
	Alter work of another	§137.33(i), §137.37(3)	1 year probated suspension/$1,500.00
	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand/$1,000.00
	Practice or affix seal with expired or inactive license	§137.13(h), §137.37(2)	1 year probated suspension/$500.00
	Practice or affix seal with suspended license	§137.37(2)	Revocation/$3,000.00
	Sealing work endangering the public	§137.37(1)	Revocation/$3,000.00
	Preprinting of blank forms with engineer seal; use of decal or other seal replicas; rubber stamp or computer-generated signature (scanned image of original) in lieu of actual signature	§137.31(e)(f)	1 year probated suspension/$1500.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand/$500.00
	Improper use of standards	§137.33(c)	Reprimand/$500.00

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Brazos Valley Council of Governments

Notice of Release of Request for Proposal for Financial Monitoring

On June 28, 2006 the Brazos Valley Council of Governments (BVCOG) and Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for independent financial monitoring services for the Brazos Valley Workforce Development Area. Monitoring Services must be conducted by a certified public accountant. The workforce center system serves Brazos, Washington, Robertson, Burleson, Madison, Leon, and Grimes counties. An original and four copies of a written proposal are due to the Board's offices no later than 4:00 p.m. July 28, 2006. No responses will be accepted after this deadline. Questions may be submitted by email to Vonda Morrison at vmorrison@bvcog.org or faxed to (979) 595-2810, no later than July 14, 2006. Answers to submitted questions will be posted on the Board's web page www.bvjobs.org. The contact person for this RFP is Vonda Morrison, Workforce Solutions Brazos Valley Board, P.O. Drawer 4128, Bryan, TX 77805 or by phone at (979) 595-2800, or by email at vmorrison@bvcog.org.

TRD-200603447
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: June 26, 2006

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Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Public Safety (DPS), announces the issuance of Request for Proposal (RFP) #303-6-11362. TBPC seeks a ten (10) year lease of approximately 3,454 square feet of office space in Abilene, Taylor County, Texas.

The deadline for questions is July 6, 2006 and the deadline for proposals is July 25, 2006 at 3:00 P.M. The anticipated award date is August 31, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at: http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=65423

TRD-200603434
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: June 26, 2006

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 16, 2006, through June 22, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 28, 2006. The public comment period for these projects will close at 5:00 p.m. on July 28, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Department of Transportation; Location: The project is located in East Bay and adjacent wetlands, on Bolivar Peninsula, along State Highway (SH) 87 from the Bolivar Ferry landing to SH 124, south of High Island, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Galveston, Flake, Caplen, Frozen Point, and High Island, Texas. Approximate UTM Coordinates in NAD 27 (meters) west end: Zone 15; Easting: 327683; Northing: 3249490. Approximate UTM Coordinates in NAD 27 (meters) east end: Zone 15; Easting: 365320; Northing: 3269659. Project Description: The applicant proposes to conduct maintenance excavation within 23 outfall channels and several roadside ditches along and perpendicular to SH 87. The project will impact 4.87 acres of wetlands and other waters of the U. S., comprised of 3.98 acres of wetlands and 0.98 acre of open water. The wetlands impacted include roadside ditches dominated by facultative wetland species to brackish marsh dominated by sea-oxeye daisy (Borrichia frutescens), marshhay cordgrass (Spartina patens), salt grass (Distichlis spicata), and glasswort (Salicornia virginica). The proposed typical cross section of the outfall channels is a 6-foot bottom width channel approximately 2 feet in depth with 3:1 slopes. Work will be accomplished by excavating the channels and ditches from mats when necessary utilizing a backhoe within a 30-foot-wide easement. All excavated material will be hauled to an upland site for placement. The upland placement site has not been identified; however, the applicant will be required to specify placement area(s) and have them approved prior to beginning construction. The applicant has not proposed mitigation for this project and states that they do not believe it is necessary because the project is for maintenance. The project also includes the discharge of a total of 16 cubic yards of fill for the replacement of culverts at ten of the outfall channels. CCC Project No.: 06-0319-F1; Type of Application: U.S.A.C.E. permit application #23382(Rev.) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Michael Morrison; Location: The project is located at 1208 Yacht Basin Road, in Gilchrist, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Frozen Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 353499; Northing: 3265829. Project Description: The applicant proposes to place fill into 0.363 acre of adjacent wetlands and waters of the U. S. located in "Slip 3" for development in support of a private residence and horticultural business. The applicant proposes to mitigate by enhancing wetland development within a 0.340-acre area known as "Slip 2". CCC Project No.: 06-0323-F1; Type of Application: U.S.A.C.E. permit application #24083(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: LLOG Exploration Texas, L.P.; Location: The project is located approximately 13 miles east-southeast of Port Lavaca, Texas, in the Matagorda Bay Area, State Tract (ST) 103, location numbers 1 and 2, in Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Keller Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 752384; Northing: 3162618. Project Description: The applicant proposes to install and maintain a proposed drilling barge, platform, and appurtenant structures in order to drill the ST 103 Well Nos. 1 and 2 from the same surface location. No dredging is proposed. CCC Project No.: 06-0324-F1; Type of Application: U.S.A.C.E. permit application #24060 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: City of Nassau Bay; Location: The project is located in Clear Lake, in and around the Nassau Bay area, in Harris and Galveston Counties, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 299124; Northing: 3270642. Project Description: The applicant proposes to hydraulically dredge 25,203 linear feet of channels within Clear Lake. The total amount of cubic yards expected from the dredging of Clear Lake would be 198,569. The channels can be categorized as: Nassau Bay, Cow Bayou, Tantalus Bay, Clear Creek, South Shore Island, Swan Lagoon, and Constellation Point. All the channels will have a width of 40 feet and a maximum depth of -8 feet. The dredge material would be placed in an upland area located north of the intersection of FM 270 and Barger Street, in Galveston County, Texas. The capacity of the dredged material placement area (DMPA) is 205,492 cubic yards. The DMPA was delineated and verified under Corps verification number D-17844. No wetlands will be impacted by the DMPA. The original permit, issued in August 1998, authorized the mechanical dredging of 1,500 linear feet of channels within Nassau Bay. The channels were authorized to be dredged to a depth of 6 feet and a width of 40 feet. Amendment (01), issued in June 2000, added hydraulic dredging to the authorization. The authorization to perform dredging expired December 31, 2001. No work was performed within the project area. CCC Project No.: 06-0325-F1; Type of Application: U.S.A.C.E. permit application #21060(02) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P. O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200603463
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: June 27, 2006

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period June 2006, as required by Tax Code, §202.058, is $61.74 per barrel for the three-month period beginning on March 1, 2006, and ending May 31, 2006. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of June 2006, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period June 2006, as required by Tax Code, §201.059, is $5.91 per mcf for the three-month period beginning on March 1, 2006, and ending May 31, 2006. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of June 2006, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200603474
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: June 28, 2006

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Notice of Request for Proposals

Pursuant to Chapters 403, 404, 791, and 2256 and Chapter 2156, Section 2156.121, Texas Government Code, the Comptroller of Public Accounts (Comptroller), acting on behalf of the Texas Treasury Safekeeping Trust Company (Trust Company), announces its Request for Proposals (RFP No. 176b) for investment management and related services for the Texas Local Government Investment Pool (TexPool & TexPool Prime). The successful respondent or respondents must be able to begin performance of the contract no later than September 1, 2006, with transition to services under the new contract completed by December 31, 2006. The Comptroller's current contract for similar services expires August 31, 2006, unless terminated sooner according to its terms, with two (2) remaining one-year renewals. The Comptroller reserves the right, in its sole judgment and discretion, to award one or more contracts as a result of the issuance of this RFP.

Contact: Parties interested in submitting a proposal or reviewing the RFP should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Rm G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The complete RFP will be

available for pick-up at the above-referenced address on Friday, July 7, 2006, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the complete RFP available electronically on the *Electronic State Business Daily* after 10:00 a.m. CZT, on Friday, July 7, 2006.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions concerning the RFP must be in writing and submitted no later than July 21, 2006, 2:00 p.m. Questions must be faxed to (512) 475-0973, Attn: William Clay Harris, Assistant General Counsel, Contracts. On or before July 28, 2006, or as soon thereafter as practical, the Comptroller expects to post answers to these written questions as a revision to the electronic notice of the issuance of the RFP. The website address of the *Electronic State Business Daily* is: http://esbd.tbpc.state.tx.us. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office (Issuing Office) at the address specified above no later than 2:00 p.m. (CZT), on Monday, August 7, 2006. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision. The Comptroller and Trust Company reserve the right to accept or reject any or all proposals submitted. The Comptroller and Trust Company are under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Neither the Comptroller nor the Trust Company shall pay any costs or any other amounts incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 7, 2006, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent & Questions - July 21, 2006, 2:00 p.m., CZT; Official Answers to Questions Posted - July 28, 2006, or as soon thereafter as practical; Proposals Due - August 7, 2006, 2:00 p.m. CZT; Contract Execution - September 1, 2006, or as soon thereafter as practical; Commencement of Work - September 1, 2006; Transition Complete - December 31, 2006.

TRD-200603468
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 28, 2006

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Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Section 403.011, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #177a) from qualified, independent firms to provide consulting services to Comptroller on a "pooled contract" basis, to assist Comptroller in conducting Local Government Management Reviews (LGMR or Reviews) of selected cities and counties statewide. The successful respondents will assist Comptroller in conducting the Reviews under master or pooled contracts, on an as-assigned basis throughout the state. Comptroller reserves the right to select multiple contractors to participate in conducting the Reviews, as set forth in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 1, 2006, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, July 7, 2006, after 10 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also will make the complete RFP available electronically on the Electronic State Business Daily at: http://esbd.tbpc.state.tx.us after 10 a.m. (CZT) on Friday, July 7, 2006.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Friday, July 21, 2006. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than Tuesday, July 25, 2006, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Tuesday, August 1, 2006. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 7, 2006, after 10:00 a.m. CZT; All Non-Mandatory Letters of Intent and Questions Due - July 21, 2006, 2 p.m. CZT; Official Responses to Questions Posted - July 25, 2006, or as soon thereafter as practical; Proposals Due - August 1, 2006, 2 p.m. CZT; Contract Execution - September 1, 2006, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2006, or as soon thereafter as practical.

TRD-200603469
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 28, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/03/06 - 07/09/06 is 18% for Consumer[1]/Agricultural/Commercial[2] credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/03/06 - 07/09/06 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 07/01/06 - 07/31/06 is 18% for Consumer/Agricultural/Commercial credit thru $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 07/01/06 - 07/31/06 is 18% for Commercial over $250,000.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-200603448
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 27, 2006

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 7, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 7, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Angelina and Neches River Authority Industrial Development Corporation; DOCKET NUMBER: 2006-0305-MWD-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN103019709; LOCATION: Lufkin, Angelina County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), Texas Pollutant Discharge Elimination System Permit Number 11620001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen and five-day carbonaceous biochemical oxygen demand and by failing to submit the annual sludge report; PENALTY: $4,480; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Baba Sadiq Investments, Inc. dba Rite Track 5; DOCKET NUMBER: 2006-0259-PST-E; IDENTIFIER: RN102242187; LOCATION: Jacksonville, Cherokee County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to provide proper overfill prevention equipment; 30 TAC §334.49(c)(2)(C) and (4) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system and by failing to inspect and test the corrosion protection system for operability; 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i)(III) and the Code, §26.3475(c)(1), by failing to have a release detection method capable of detecting a release, by failing to test the line leak detectors, and by failing to monitor the pressurized piping; and 30 TAC §334.48(c)(5)(C), by failing to conduct effective manual or automatic inventory control procedures and by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: $14,732; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Cemex, Inc.; DOCKET NUMBER: 2006-0303-AIR-E; IDENTIFIER: RN100213305; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: cement manufacturing; RULE VIOLATED: 30 TAC §116.115(a), Permit Number 5296, and THSC, §382.085(b), by failing to comply with permitted opacity limits; PENALTY: $108,750; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(4) COMPANY: Enbridge Pipelines (NE Texas) L.P.; DOCKET NUMBER: 2006-0448-AIR-E; IDENTIFIER: RN100209477; LOCATION: Gilmer, Upshur County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an emissions event report; and 30 TAC §116.115(b)(2)(F), New Source Review Permit Number 24450, and THSC, §382.085(b), by failing to prevent unauthorized emissions of carbon monoxide, natural gas, nitrous oxides, and sulfur dioxide; PENALTY: $2,080; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2006-0365-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 18287, and THSC, §382.085(b), by failing to prevent an avoidable emissions event; PENALTY: $10,000; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: GSF Energy, L.L.C.; DOCKET NUMBER: 2006-0277-IHW-E; IDENTIFIER: RN100222710; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: landfill gas recovery; RULE VIOLATED: 30 TAC §335.69(a)(1)(B) and 40 Code of Federal Regulations (CFR) §§262.34(a)(1)(ii), 265.192(a), 265.193(f), and 265.195(b)(1), by failing to conduct a structural integrity assessment

for a hazardous waste tank, by failing to conduct the annual cathodic protection operation inspection, and by failing to provide secondary containment for underground ancillary equipment; 30 TAC §335.6(c), by failing to update the facility's notice of registration with accurate information; 30 TAC §335.431(c) and 40 CFR §268.7(a)(2), by failing to have land disposal restriction documentation for one waste stream; and 30 TAC §335.513(c) and 40 CFR §268.7(a)(8), by failing to have waste stream classification documentation for five waste streams; PENALTY: $63,360; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Holland; DOCKET NUMBER: 2006-0337-PWS-E; IDENTIFIER: RN102674629; LOCATION: Holland, Bell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies; 30 TAC §290.46(f)(2), (n)(2), and (u), by failing to provide water system records for review during investigations, by failing to maintain and make available an accurate and up-to-date map of the distribution system, and by failing to test water system wells at least once every five years; 30 TAC §290.42(1), by failing to maintain a plant operations manual; and 30 TAC §290.45(f)(4) and (5) and THSC, §341.0315(c), by failing to provide a contract with a maximum daily purchase rate plus actual production capacity of the system of at least 0.6 gallon per minute (gpm) per connection and by failing to provide a contract with a maximum hourly purchase rate plus actual service pump capacity of the system of at least 2 gpm per connection or provide at least 1,000 gpm and be able to meet peak hourly demands; PENALTY: $2,182; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Innovene USA L.L.C.; DOCKET NUMBER: 2006-0242-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Air Permit Numbers 95 PSD-TX-854, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $21,960; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: J. A. Hatfield, Inc.; DOCKET NUMBER: 2006-0492-WQ-E; IDENTIFIER: RN104921853; LOCATION: Colleyville, Tarrant County, Texas; TYPE OF FACILITY: company that is constructing a custom home; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Fred E. Koricanek; DOCKET NUMBER: 2006-0526-AGR-E; IDENTIFIER: RN104796834; LOCATION: Westhoff, DeWitt County, Texas; TYPE OF FACILITY: poultry egg-laying; RULE VIOLATED: 30 TAC §321.33(a), by failing to obtain authorization under a water quality general permit or individual permit for a concentrated animal feeding operation; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Robert N. Freeman dba Las Aves Country Retreat; DOCKET NUMBER: 2006-0451-PWS-E; IDENTIFIER: RN104490685; LOCATION: Medina, Bandera County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(A) and THSC, §341.034(b), by failing to provide a public water supply operator who holds an applicable, valid license; PENALTY: $420; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Nova Chemicals Inc.; DOCKET NUMBER: 2006-0355-AIR-E; IDENTIFIER: RN100542224; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical production; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 5252, and THSC, §382.085(b), by failing to prevent an avoidable emissions event; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Post Oak Development of Texas, Inc.; DOCKET NUMBER: 2006-0425-PWS-E; IDENTIFIER: RN103172078; LOCATION: Castroville, Medina County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(h)(1), by failing to submit modification plans for the water system's storage facilities and obtain commission approval; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data prior to placing a public water supply well into service; PENALTY: $171; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Racetrac Petroleum, Inc. dba Racetrac 512; DOCKET NUMBER: 2006-0378-PWS-E; IDENTIFIER: RN102270121; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect water samples for bacteriological analysis; 30 TAC §290.122(c)(2)(B), by failing to post public notice of the failure to conduct sampling; and 30 TAC §5.702 and §26.0291, by failing to pay outstanding general permit storm water fees; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Waste Works, L.L.C.; DOCKET NUMBER: 2006-0368-MSW-E; IDENTIFIER: RN104891718; LOCATION: Whitewright, Grayson County, Texas; TYPE OF FACILITY: transfer station; RULE VIOLATED: 30 TAC §330.9(b), by failing to obtain appropriate registration or other authorization to operate a transfer station; PENALTY: $800; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Wholearth Organic Composting, L.L.C.; DOCKET NUMBER: 2006-0501-MSW-E; IDENTIFIER: RN101478071; LOCATION: Elmendorf, Bexar County, Texas; TYPE OF FACILITY: composting; RULE VIOLATED: 30 TAC §332.47(9), by failing to provide financial assurance; PENALTY: $896; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200603449
Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: June 27, 2006

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Enforcement Orders

An agreed order was entered regarding City of Yorktown, Docket No. 2003-0115-MWD-E on 06/20/2006 assessing $25,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney, at (817) 588-5927, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aristos, Inc. dba Smart Stop, Docket No. 2003-1172-PST-E on 06/20/2006 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney, at (512) 239-1320, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Uni-Wide Auto Imports, Inc., Docket No. 2003-1522-MSW-E on 06/20/2006 assessing $11,655 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney, at (713) 422-8914, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Formosa Plastics Corporation, Texas, Docket No. 2005-0938-AIR-E on 06/20/2006 assessing $34,542 in administrative penalties with $6,908 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra L. Ruble, Enforcement Coordinator, at (361) 825-3126, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A P G & Z Inc. dba McKinney Food Store, Docket No. 2002-1016-PST-E on 06/20/2006 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Curnutt, Staff Attorney, at (512) 239-0624, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Army Corps of Engineers, Docket No. 2004-0328-PWS-E on 06/20/2006 assessing $1,715 in administrative penalties with $343 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator, at (512) 239-4575, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Huxley, Docket No. 2004-0932-PWS-E on 06/20/2006 assessing $1,634 in administrative penalties with $166 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator, at (512) 239-0789, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary P. Jaquess dba Gary's Haltom City Car Wash, Docket No. 2004-1347-PST-E on 06/20/2006 assessing $4,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney, at (817) 588-5927, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding May Carson dba Cornudas Restaurant, Docket No. 2005-1347-PWS-E on 06/20/2006 assessing $1,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Staff Attorney, at (361) 825-3126, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding P & J Industries, Inc., Docket No. 2004-1369-IHW-E on 06/20/2006 assessing $25,956 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2004-1450-AIR-E on 06/20/2006 assessing $204,603 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney, at (713) 422-8914, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Beltran, Docket No. 2004-1904-PST-E on 06/20/2006 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company, LP dba Cedar Bayou Chemical Plant, Docket No. 2005-0007-AIR-E on 06/20/2006 assessing $4,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney, at (713) 422-8914, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mercedes Independent School District, Docket No. 2005-0588-PST-E on 06/22/2006 assessing $11,000 in administrative penalties with $2,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jose A. Menjivar, Sr., Docket No. 2005-0729-LII-E on 06/20/2006 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney, at (512) 239-1320, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Baird, Docket No. 2005-1043-PWS-E on 06/20/2006 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana Horton, Staff Attorney, at (512) 239-1088, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MMR Joint Ventures, Ltd., Docket No. 2005-1096-EAQ-E on 06/20/2006 assessing $13,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney, at (512) 239-6500, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Star Tex Gasoline & Oil Distributors, Inc., Docket No. 2005-1146-PST-E on 06/20/2006 assessing $2,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney, at (512) 239-1877, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Pacifico Transportation, LTD., Docket No. 2005-1152-MLM-E on 06/20/2006 assessing $20,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator, at (817) 588-5928, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brownsville Independent School District, Docket No. 2005-1153-PST-E on 06/20/2006 assessing $2,015 in administrative penalties with $403 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator, at (713) 422-8931, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Heart of Texas Investments, Inc., dba A&A Chevron, Docket No. 2005-1168-PST-E on 06/22/2006 assessing $2,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Darren Taylor, Docket No. 2005-1205-OSS-E on 06/20/2006 assessing $8,531 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney, at (512) 239-0619, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2005-1255-MWD-E on 06/20/2006 assessing $4,470 in administrative penalties with $894 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator, at (817) 588-5928, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gateway Truck Terminal, Inc., Docket No. 2005-1406-PST-E on 06/20/2006 assessing $6,825 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Curnutt, Staff Attorney, at (512) 239-0624, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Manville Water Supply District, Docket No. 2005-1435-MLM-E on 06/20/2006 assessing $7,800 in administrative penalties with $1,560 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825-3126, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Diversified Investments, Inc., dba Courtesy Mart 109, Docket No. 2005-1457-PST-E on 06/20/2006 assessing $2,910 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney, at (512) 239-1877, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Mustang, Docket No. 2005-1503-MWD-E on 06/20/2006 assessing $13,684 in administrative penalties with $2,737 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at (361) 825-3126, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town & Country Enterprises Inc. dba Town & Country Food Mart, Docket No. 2005-1525-PST-E on 06/22/2006 assessing $2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney, at (512) 239-0619, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oak Tree Properties, Inc. dba Oak Tree Deli, Docket No. 2005-1640-PST-E on 06/20/2006 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Kemp, Enforcement Coordinator, at (512) 239-5610, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Parmer-McNeil Holdings, Ltd., Docket No. 2005-1661-EAQ-E on 06/20/2006 assessing $27,000 in administrative penalties with $5,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator, at (512) 239-4571, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CP Red Oak Partners, Ltd. Docket No. 2005-1733-EAQ-E on 06/20/2006 assessing $33,000 in administrative penalties with $6,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator, at (512) 239-2505, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hirschfeld Steel Co., Inc., Docket No. 2005-1864-AIR-E on 06/20/2006 assessing $21,350 in administrative penalties with $4,270 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding, Syed N. Hyder, Docket No. 2005-1895-MWD-E on 06/20/2006 assessing $19,000 in administrative penalties with $3,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator, at (512) 239-5690, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating L.P., Docket No. 2005-1905-AIR-E on 06/20/2006 assessing $10,950 in administrative penalties with $2,190 deferred.

Information concerning any aspect of this order may be obtained by contacting Amy Burgess, Enforcement Coordinator, at (512) 239-2540, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Farmers Transport, Inc. dba Enchanted Harbor Utility, Docket No. 2005-1922-PWS-E on 06/20/2006 assessing $318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gil Villa dba Villa Dairy Docket No. 2005-1969-AGR-E on 06/20/2006 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MPR Investments, LLC dba Oakridge Square Mobile Home Park, Docket No. 2005-2004-PWS-E on 06/20/2006 assessing $1,733 in administrative penalties with $347 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator, at (512) 239-2670, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coast to Coast Investments, Inc., Docket No. 2005-2010-MLM-E on 06/20/2006 assessing $9,690 in administrative penalties with $1,938 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator, at (512) 239-2504, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell Chemical Company, Docket No. 2005-2012-AIR-E on 06/20/2006 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lubbock, Docket No. 2005-2013-MWD-E on 06/20/2006 assessing $16,425 in administrative penalties with $3,285 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator, at (512) 239-6589, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Overseas Enterprises USA, Inc. dba Gateway Travel Plaza, Docket No. 2005-2064-WQ-E on 06/20/2006 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2005-2066-AIR-E on 06/20/2006 assessing $3,525 in administrative penalties with $705 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Morton, Docket No. 2005-2075-MWD-E on 06/20/2006 assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator, at (512) 239-4492, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2006-0007-AIR-E on 06/20/2006 assessing $8,300 in administrative penalties with $1,660 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator, at (409) 899-8781, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hermenegildo Bueno dba Paisano Truck Stop, Docket No. 2006-0009-PST-E on 06/20/2006 assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wichita Falls, Docket No. 2006-0027-WQ-E on 06/20/2006 assessing $2,280 in administrative penalties with $456 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Covenant Health System, Docket No. 2006-0047-MSW-E on 06/20/2006 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator, at (956) 430-6030, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K-Yoba, Inc. dba Jedco 21, Docket No. 2006-0053-PST-E on 06/20/2006 assessing $5,600 in administrative penalties with $1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator, at (512) 239-4575, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edinburg, Docket No. 2005-0531-PST-E on 06/20/2006 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator, at (956) 430-6030, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Overton, Docket No. 2006-0089-PWS-E on 06/20/2006 assessing $318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel Lacaille, Enforcement Coordinator, at (512) 239-1387, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Bend County Municipal Utility District No. 124, Docket No. 2006-0101-MWD-E on 06/20/2006 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Temple, Docket No. 2006-0117-PWS-E on 06/20/2006 assessing $995 in administrative penalties with $199 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel Lacaille, Enforcement Coordinator, at (512) 239-1387, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Water Control and Improvement District No. 70, Docket No. 2006-0142-MWD-E on 06/20/2006 assessing $2,604 in administrative penalties with $521 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Pipe Line Company, Docket No. 2006-0157-AIR-E on 06/20/2006 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel Lacaille, Enforcement Coordinator, at (512) 239-1387, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Willis, Docket No. 2006-0168-MWD-E on 06/20/2006 assessing $1,815 in administrative penalties with $363 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator, at (903) 535-5145, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bontke Brothers Construction Company, Docket No. 2006-0210-WQ-E on 06/20/2006 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Buddy's Testers, Inc., Docket No. 2006-0248-WQ-E on 06/20/2006 assessing $950 in administrative penalties with $190 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Sattar Investments, Inc. dba Fuel Distributor, Inc. dba Lorena Fastime, Docket No. 2004-0862-PST-E on 06/20/2006 assessing $20,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney St. Julian, Staff Attorney, at (512) 239-0617, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

TRD-200603473
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2006

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Notice of Public Meeting on August 8, 2006, in Austin, Texas, Concerning the Proposed Cox Road Dump State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the commission's proposal to delete the site from the state Superfund registry because the site has been accepted into the Texas Commission on Environmental Quality Voluntary Cleanup Program.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of intent to delete the Cox Road Dump state Superfund site (site) from its proposed-for-listing status on the state Superfund registry. The state registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the site has been accepted into the TCEQ Voluntary Cleanup Program. This notice was also published in the *Dayton News*, *Liberty Vindicator*, and *Cleveland Advocate* on July 5, 2006.

The site was proposed for listing on the state Superfund registry in the February 10, 2006, issue of the *Texas Register* (31 TexReg 907). The site, including all land, structures, appurtenances, and other improvements, is located one mile north of FM 1413 on the east side of County Road 491 (Cox Road), Dayton, Liberty County, Texas. The geographic coordinates of the site are 29 degrees 58 minutes 30.84 seconds North latitude, 94 degrees 56 seconds 12.83 minutes West longitude. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The site has been accepted into the TCEQ Voluntary Cleanup Program and is therefore eligible for deletion from the state registry as provided by 30 TAC §335.344(c).

The commission will hold a public meeting to receive comment on the proposed deletion of the site. This public meeting is not a contested case hearing under Texas Government Code, Chapter 2001. The public meeting is scheduled for 2:00 p.m. on Tuesday, August 8, 2006, at the

Texas Commission on Environmental Quality offices, 12100 Park 35 Circle, Building C, Room 131, in Austin, Texas.

All persons desiring to make comments may do so at the public meeting or may submit written comments prior to the public meeting. Written comments must be received by 5:00 p.m. on August 7, 2006, and should be mailed to Geoffrey E. Meyer, Senior Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 143, P. O. Box 13087, Austin, Texas 78711-3087 or by facsimile to (512) 239-2450.

A portion of the record for this site is available for review during regular business hours at the Jones Public Library, 307 West Houston Street in Dayton, Texas, (936) 258-7060. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363. Requests should be made as far in advance as possible.

For further information regarding this meeting, please call Bruce McAnally, TCEQ Community Relations, at (800) 633-9363, extension 2141.

TRD-200603462
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 27, 2006

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Notice of Water Quality Applications

The following notices were issued during the period of June 8, 2006 through June 22, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

BAYOU FOREST VILLAGE, INC. has applied for a renewal of TPDES Permit No. 12259-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 2,500 feet southeast of the intersection of Aldine Mail Road and Aldine-Westfield Road at 12500 Aldine-Westfield Road in Harris County, Texas.

CITY OF BLOOMING GROVE has applied for a renewal of TPDES Permit No. 11606-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on the west bank of Rush Creek, at a point approximately 4,200 feet southeast of the intersection of State Highway 22 and Farm-to-Market Road 55 in Navarro County, Texas.

CITY OF CALLISBURG has applied for a renewal of TPDES Permit No. 11840-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located adjacent to and west of Farm-to-Market Road 678 approximately 3,000 feet southeast of the intersection of Farm-to-Market Roads 678 and 2896 in Cooke County, Texas.

CANYON REGIONAL WATER AUTHORITY has applied for a renewal of Permit No. 14126-001, which authorizes the disposal of treated filter backwash water at a daily average flow not to exceed 64,000 gallons per day via surface irrigation of 45.1 acres of non-public access land. The permit also authorizes the disposal of water treatment plant sludge on 40 acres of land located at the plant site at an application rate not to exceed 2.1 tons per acre per year. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site and water treatment plant sludge application site are located on the south bank of the Guadalupe River, approximately 1,000 feet southwest of the dam for Lake Dunlap at Dittmar Falls, and approximately 3,000 feet northeast of the Town of Schumansville in Guadalupe County, Texas.

DAEDELUS CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014666001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility will be located approximately two miles west of the intersection of County Road 1641 and County Road 148 in Kaufman County, Texas.

FEDDERS EUBANK COMPANY, INC. has applied for a renewal of TPDES Permit No. 13830-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The facility is located on Farm-to-Market Road 2011, approximately 2 miles south of Interstate Highway 20 in Cregg County, Texas.

SOUTH FORT WORTH RV RANCH has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014680001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 48,000 gallons per day. The facility will be located at 2301 South Interstate Highway 35 West, on the east side of Interstate Highway 35 West, approximately 5/8 mile north of the intersection of Bethesda Road and Interstate Highway 35 West in Johnson County, Texas.

INDIVIDUAL CARE OF TEXAS, INC. has applied for a renewal of Permit No.14236-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.010 million gallons per day (MGD) via subsurface drip irrigation of 4.7 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on Farm-to-Market Road 36, approximately 2 miles north of the intersection of Farm-to-Market Road 36 and State Highway 276, approximately 2.4 miles west of the intersection of Sate Highway 34 and State Highway 276 in Hunt County, Texas.

JOHNSON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 14350-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located approximately 2.5 miles northeast of the intersection of State Highway 174 and Farm-to-Market Road 917 in the City of Joshua in Johnson County, Texas.

TOWN OF LAKEWOOD VILLAGE has applied for a major amendment to TPDES Permit No. WQ0010903001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 47,000 gallons per day to a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 700 feet northeast of the north end of the Old Lake Dallas Dam in Denton County, Texas.

CITY OF LONE STAR has applied for a renewal of TPDES Permit No. 14365-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 440,000 gallons per day. The facility is located approximately 1,500 feet east of U. S. Highway 259 on Morris County Road 2315 and approximately 4,000 feet south of the intersection of U. S. Highway 259 and Farm-to-Market Road 729 in Morris County, Texas.

CITY OF MARSHALL has applied for a renewal of TPDES Permit No. 10583-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 8,000,000 gallons per day. The facility is located southeast of the City of Marshall, approximately 1,800 feet southeast of the intersection of Interstate Highway 20 and Five Notch Road in Harrison County, Texas.

CITY OF MIDWAY has applied for a renewal of TPDES Permit No. 13378-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located 3,000 feet southeast of the intersection of State Highway 21 and Farm-to-Market Road 2548 and 2,200 feet east of the intersection of Gin Creek and Farm-to-Market Road 247 and east of the City of Midway in Madison County, Texas.

CITY OF MURCHISON has applied for a renewal of TPDES Permit No. 13972-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 2,800 feet northeast of the intersection of Farm-to-Market Road 773 and County Road 1616, adjacent to County Road 1616 at the northeast edge of the City of Murchison in Henderson County, Texas.

TOWN OF MUSTANG has applied for a renewal of TPDES Permit No. 11516-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located 800 feet east of the Interstate Highway 45 on Farm-to-Market Road 739 in Navarro County, Texas.

NORTH ALAMO WATER SUPPLY CORPORATION, c/o NRS Consulting Engineers, which proposes to operate the North Cameron Regional Water Treatment Plant, has applied for a minor permit amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004758000 to authorize grab sampling rather than composite sampling. The current permit authorizes the discharge of reverse osmosis reject wastewater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001. The facility is located along the north side of State Highway 107, approximately 3.5 miles west of the intersection of State Highway 107 and U. S. Highway 77 in Cameron County, Texas.

NORTHLAKE PARTNERS, LTD. has applied for a renewal of TPDES Permit No. 14484-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located on the north side of the Northlake Village Mobile Home Park, approximately 1,350 feet north of Sam Lee Road, in the Town of Northlake in Denton County, Texas.

REGENCY ACQUISITIONS CO., LLC has applied for a renewal of TPDES Permit No. 12982-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located west of Interstate Highway 35W, at the intersection of Golden Triangle Boulevard and the west service road for Interstate Highway 35W in Tarrant County, Texas.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, Proposed Permit No. WQ0014649001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 430,000 gallons per day via surface irrigation of 170 acres at a golf course. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1,200 feet northwest of the intersection of Haynie Flat Road and Travis Lakeside Drive in Travis County, Texas, in the drainage basin of the Colorado River in Segment No. 1404 of the Colorado River Basin.

T&E CONSOLIDATED, L.P. which operates the Holly Sugar Plant, a Sugar Beet Processing Plant, has applied for a renewal of Permit No. WQ0001043000, which authorizes the disposal of process wastewater, cooling tower blowdown, boiler blowdown, and storm water at a daily average flow not to exceed 800,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and treatment ponds site are located 3500 Holly Sugar Road in the City of Hereford, Deaf Smith County, Texas.

UNITED STATES DEPARTMENT OF THE ARMY, which operates a facility which maintains and rebuilds military vehicles; receives, stores, and ships ammunition, supplies, and materials for army use; maintains, renovates, modifies, and re-certifies missile systems; rebuilds tracks and road wheels; and demilitarizes out-of-spec explosive ordnance, has applied for a renewal of TPDES Permit No. WQ0002206000, which authorizes the discharge of the discharge of combined wastewater (domestic and industrial waste) from Sewer Plant "X" via Outfall 001 at a daily average flow not to exceed 1,500,000 gallons per day; sanitary waste, film rinse, and cooling tower blowdown from the oxidation pond ("K" area lagoon system) via Outfall 002 at a daily average flow not to exceed 50,000 gallons per day; and storm water commingled with previously monitored effluents (industrial wastewater from the metals/phosphate treatment facility via Outfall 003 at a daily average dry weatherflow not to exceed 900,000 gallons per day. The draft permit authorizes the discharge of sanitary waste, film rinse, cooling tower blowdown, and storm water from the oxidation pond ("K" area lagoon system) via Outfall 002 at a daily average flow not to exceed 50,000 gallons per day. The facility is located within the Red River Arsenal area which encompasses 19,000 acres south of and adjacent to U. S. Highway 82, south of the community of Hooks and approximately 6 miles east of the town of New Boston, Bowie County, Texas.

CITY OF WELLINGTON has applied for a major amendment to Permit No. WQ0010328001, to authorize an increase in the effluent limitation for pH. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via surface irrigation of 120 acres of non-public access agricultural land which will remain the same. The facility and disposal site are located 0.5 mile southwest of the intersection of State Highway 338 (15th Street) and Farm-to-Market Road 1035 (Haskell Street) in Collingsworth County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.

CITY OF GEORGETOWN has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize the change in disinfection method from Chlorination to Ultraviolet light. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 400 Rock Dove Lane, approximately 1,000 feet west of County Road 102, approximately 4,000 feet south of the intersection of State Highway 29 and County Road 102, and approximately 2.75 miles east of the intersection of State Highway 29 and State Highway Spur 418 (South Austin Avenue) in the City of Georgetown in Williamson County, Texas.

TRD-200603472

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2006

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Notice of Water Rights Application

Notice issued June 28, 2006

APPLICATION NO. 5431A; K & M Andrews Inc., 17261 County Road 4072, Scurry, Texas, 75158, has applied for an amendment to Water Use Permit No. 5431 to extend the term of the appropriation, add two existing on-channel impoundments with bed and banks authorizations on Bois D'Arc Creek and an unnamed tributary of Bois D'Arc Creek, Trinity River Basin, one off-channel reservoir, and two additional diversion points in Kaufman County. The application was received on December 27, 2002. Additional information was received on March 13 and May 2, 2003, September 13, 2004, June 14 and 22, 2005 and October 4 and 5, 2005, and April 12, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on December 7, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200603471

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 28, 2006

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual JC/OH Report Due January 18, 2005

Morris L. Overstreet, 200 Williams, Prairie View, Texas 77446

Deadline: Semiannual JC/OH Report Due July 15, 2005

Morris L. Overstreet, 200 Williams, Prairie View, Texas 77446

Deadline: Semiannual GPAC/SPAC Report Due January 17, 2006

Nathan A. East, San Patricio County Republican Party CEC, P. O. Box 1333, Portland, Texas 78374

Marcus M. Mpwo, African Coalition Political Action Committee, 17807 Scenic Oaks Dr., Richmond, Texas 77469

John Osborne, Texas Chapter of the American College of Cardiology Heart PAC, 13140 Coit Rd., Ste. 320, LB 120, Dallas, Texas 75240-5737

Deadline: Semiannual JC/OH Report Due January 17, 2006

Malcolm Dade, 3521 Oak Lawn Ave., PMB 351, Dallas, Texas 75219

James J. McCutcheon, 254 N. Lake St., Axtell, Texas 76624

Gary D. Pratt, 10541 Kelburn Dr., Houston, Texas 77016-2750

Monte D. West, P. O. Box 1, Montgomery, Texas 77356-0001

Deadline: 30-Day Pre-Election Report Due February 6, 2006

Heath G. Harris, 4144 N. Central Expy., Ste. 650, Dallas, Texas 75204

Daphne Villarreal, Texas Republican Alliance, 11203 Candle Park, San Antonio, Texas 78249

John White, 400 E. Weatherford, Fort Worth, Texas 76102

Deadline: 8-Day Pre-Election Report Due February 27, 2006

Jack F. Borden, Sr., P. O. Box 191913, Dallas, Texas 75219

Michael A. Franks, 602 Koehl St., Wharton, Texas 77488

Star Locke, 4929 Cain Dr., Corpus Christi, Texas 78411-4720

Tony Mandujano, P. O. Box 241268, San Antonio, Texas 78224

Herschel Smith, 10201 Telephone Rd. #45A, Houston, Texas 77075

Christina Stone, Associated Builders & Contractors of Greater Houston PAC, 3910 Kirby Dr, Ste. 131, Houston, Texas 77098

John White, 400 E. Weatherford, Fort Worth, Texas 76102

Tom Yturri, Texas Academy of Physician Assistants - PAC, 401 W. 15th St., Austin, Texas 78701

Deadline: Monthly Report Due April 5, 2006

Robert B. Aguirre, All Children Matter, Texas, 1504 San Antonio, Ste. 200, Austin, Texas 78701

Deadline: 30-Day Pre-Election Report Due April 13, 2006

Darwin McKee, Central Texas PAC Centre Development, P. O. Box 2513, Austin, Texas 78768

Deadline: 8-Day Pre-Election Report Due May 5, 2006

Margaret Doescher, Kingwood Area Republican Women's Club, 2638 Pine Cone Dr., Kingwood, Texas 77339

Deadline: Monthly Report Due May 5, 2006

Robert B. Aguirre, All Children Matter, Texas, 1504 San Antonio, Ste. 200, Austin, Texas 78701

TRD-200603422
David Reisman
Executive Director
Texas Ethics Commission
Filed: June 22, 2006

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 16 to the Texas State Plan for the State Children's Health Insurance Program (CHIP) under Title XXI of the Social Security Act. The proposed effective date of this amendment is August 1, 2006.

This amendment increases the amount of time that families enrolled in CHIP have to pay the enrollment fee upon renewal. Under the current state plan, families renewing coverage have until cut-off of the last month of the current six-month coverage period to pay the enrollment fee. Cut-off is usually 10-15 days prior to the end of the month. Under the amended state plan, families will have until cut-off of the first month of the new six-month coverage period to pay the enrollment fee.

HHSC anticipates that the proposed amendment to the state plan will result in a neutral fiscal impact for state fiscal years 2006 and 2007.

For additional information, please contact Kimberly Tucker in the Acute Care Policy Development unit for the Medicaid and CHIP Division by telephone at (512) 491-1161 or by e-mail at kimberly.tucker@hhsc.state.tx.us.

TRD-200603464
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 27, 2006

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Department of State Health Services

Notice of Opportunity for Public Comment

The federal statute authorizing Community Mental Health Block Grants requires the Department of State Health Services (department) to submit its plan for providing comprehensive community mental health services for the coming fiscal year (FY) 2007 (42 USC 300x-1). The plan must provide for an organized community-based system of care for individuals who are either adults with a serious mental illness or children with a serious emotional disturbance. Federal law requires that the department make its plan public so as to facilitate comment from interested persons and organizations during the development of the plan (42 USC 300x-51).

For this purpose, the draft state plan for FY 2007 is being made available for review and comment and can be accessed on the following department website on or about July 7, 2006: http://www.dshs.state.tx.us/cpi/mhbg. A copy of the draft plan may also be obtained by contacting Lauren Lacefield Lewis at (512) 206-4747, or at the address reflected in the following paragraph of this notice.

Comments regarding the draft plan that are received by 5:00 p.m. on Friday, August 4, 2006 will be shared with the Mental Health Planning and Advisory Council and considered in connection with development of the final draft. Comments can be submitted through the website where the draft state plan is posted: http://www.dshs.state.tx.us/cpi/mhbg; or directly to the following email address: MHBG@dshs.state.tx.us; or by mail to: Lauren Lacefield Lewis, Branch Manager, Mental Health Program Services Unit, Community Mental Health and Substance Abuse Section, Department of State Health Services, Mail Code 2018, 909 West 45th Street, Austin, Texas 78751.

TRD-200603437
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 26, 2006

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Texas Department of Insurance

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C-H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Independence American Insurance Company.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Independence American Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200603460
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 27, 2006

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C-H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Unicare Life & Health Insurance Company.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Unicare Life & Health Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200603461
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 27, 2006

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of HARRINGTON BENEFIT SERVICES, INC., to HARRINGTON BENEFIT SERVICES, INC., (using the assumed name of FISERV HEALTH-HARRINGTON), a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application to change the name of COMMONWEALTH CLAIMS MANAGEMENT ASSOCIATES, INC., to ALAN GRAY CLAIMS PROCESSING SERVICES, INC., a foreign third party administrator. The home office is BOSTON, MASSACHUSETTS.

Application for admission to Texas of HUMANA HEALTH PLAN, INC., a foreign third party administrator. The home office is FRANKFORT, KENTUCKY.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200603424
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 22, 2006

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Texas Department of Insurance, Division of Workers' Compensation

Notice of Public Hearing

The Texas Department of Insurance (TDI), Division of Workers' Compensation will hold a public hearing on Wednesday, July 26, 2006 in the Tippy Foster Room of the Division's Central Office located at 7551 Metro Center Drive, Suite 100 (near the intersection of Highway 71 and Riverside Drive) in Austin.

The public hearing will begin at 9:30 a.m. and the Division will take testimony on the following rules:

CHAPTER 133. MEDICAL BILLING AND PROCESSING

SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

§133.305. Medical Dispute Resolution--General. (Repeal)

§133.305. Medical Dispute Resolution--General. (New)

§133.307. Medical Dispute Resolution of a Medical Fee Dispute. (Repeal)

§133.307. Medical Dispute Resolution of Fee Disputes. (New)

§133.308. Medical Dispute Resolution by Independent Review Organizations. (Repeal)

§133.308. Medical Dispute Resolution by Independent Review Organizations. (New)

The proposed rules were published in the *Texas Register* on June 23, 2006 (31 TexReg 5042), and may be viewed on the TDI website at http://www.tdi.state.tx.us/wc/proposedrules/toc.html. Although the comment period for these rules will close on July 24, 2006, additional comments will be accepted at the hearing.

TDI offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Cantu at (512) 804-4403 at least of two days prior to the hearing date.

For further information regarding this notice, contact Kevin Haywood of the Division's Legal and Compliance Section at (512) 804-4424.

TRD-200603478
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 28, 2006

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Texas Lottery Commission

Instant Game Number 668 "Club Casino"

1.0 Name and Style of Game.

A. The name of Instant Game No. 668 is "CLUB CASINO". The play style for game ROULETTE is "key number match". The play style for game 7-11 is "add up". The play style for game SLOTS is "key symbol match". The play style for game TWO OF A KIND is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 668 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 668.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000, $5,000, $50,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, ONE DICE SYMBOL, TWO DICE SYMBOL, THREE DICE SYMBOL, FOUR DICE SYMBOL, FIVE DICE SYMBOL, SIX DICE SYMBOL, CHERRY SYMBOL, LEMON SYMBOL, STACK OF BILLS SYMBOL, CROWN SYMBOL, HORSESHOE SYMBOL, SHAMROCK SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, 2 CARD SYMBOL, 3 CARD SYMBOL, 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, JACK CARD SYMBOL, QUEEN CARD SYMBOL, KING CARD SYMBOL and ACE CARD SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 668 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
$1,000	ONE THOU
$5,000	FIV THOU
$50,000	50 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
ONE DICE SYMBOL	ONE
TWO DICE SYMBOL	TWO
THREE DICE SYMBOL	THREE
FOUR DICE SYMBOL	FOUR
FIVE DICE SYMBOL	FIVE
SIX DICE SYMBOL	SIX
CHERRY SYMBOL	CHERRY
LEMON SYMBOL	LEMON
STACK OF BILLS SYMBOL	BILLS
CROWN SYMBOL	CROWN
HORSESHOE SYMBOL	HRSHOE
SHAMROCK SYMBOL	SHMRCK
POT OF GOLD SYMBOL	GOLD
GOLD BAR SYMBOL	BAR
2 CARD SYMBOL	TWO
3 CARD SYMBOL	THREE
4 CARD SYMBOL	FOUR
5 CARD SYMBOL	FIVE
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SEVEN
8 CARD SYMBOL	EIGHT
9 CARD SYMBOL	NINE
10 CARD SYMBOL	TEN
JACK CARD SYMBOL	JACK
QUEEN CARD SYMBOL	QUEEN
KING CARD SYMBOL	KING
ACE CARD SYMBOL	ACE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 668 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (668), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 668-0000001-001.

L. Pack - A pack of "CLUB CASINO" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CLUB CASINO" Instant Game No. 668 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CLUB CASINO" Instant Game is determined once the latex on the ticket is scratched off to expose 61 (sixty-one) Play Symbols. In the game ROULETTE, if a player matches the YOUR NUMBER play symbol to any ROULETTE WHEEL number play symbols, the player wins the PRIZE shown for that number. In the game 7-11, if any of YOUR ROLLS play symbols add up to 7 or 11 within the same ROLL, the player wins PRIZE shown for that ROLL. In the game SLOTS, if a player reveals three (3) matching play symbols in any one PULL, the player wins the PRIZE for that PULL. In the game TWO OF A KIND, if a player reveals (two) 2 matching CARDS in any HAND, the player wins PRIZE shown for that HAND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 61 (sixty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 61 (sixty-one) Play Symbols under the latex overprint on the front portion

of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 61 (sixty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 61 (sixty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Game ROULETTE: Players can win up to six (6) times in this play area.

C. Game ROULETTE: No duplicate non-winning ROULETTE WHEEL numbers on a ticket.

D. Game ROULETTE: Non-winning prize symbols will not match a winning prize symbol in this play area.

E. Game ROULETTE: ROULETTE WHEEL numbers will never equal the corresponding PRIZE symbol.

F. Game ROULETTE: On all tickets, a non-winning prize amount will never appear more than twice in this play area.

G. Game 7-11: Players can win up to six (6) times in this play area.

H. Game 7-11: No prize amount will appear more than two (2) times in this play area except as required on multiple win tickets.

I. Game 7-11: Non-winning tickets will never have a total of seven (7) or eleven (11) within the same ROLL.

J. Game 7-11: On winning tickets, non-winning rolls will have different prize amounts from the winning prize amount in this play area.

K. Game SLOTS: There will never be three (3) identical symbols in a vertical or diagonal line.

L. Game SLOTS: No prize amount will appear more than two (2) times in this play area except as required on multiple win tickets.

M. Game SLOTS: Non-winning tickets will never contain more than three (3) of the same play symbols over the entire play area.

N. Game SLOTS: Consecutive non-winning tickets within a book will not have identical PULLS. For instance if the first ticket contains CHERRIES, CROWN, POT OF GOLD in any PULL then the next ticket may not contain CHERRIES, CROWN and POT OF GOLD in any row in any order.

O. Game SLOTS: Non-winning tickets will not have identical pulls. For example if PULL 1 is CHERRIES, CROWN, and POT OF GOLD then PULL 2 through PULL 6 will not contain CHERRIES, CROWN, and POT OF GOLD in any order.

P. Game SLOTS: Winning tickets will contain three (3) like Play Symbols in a horizontal row.

Q. Game SLOTS: Players can win up to six (6) times in this play area.

R. Game SLOTS: On winning tickets, non-winning games will have different prize amounts from the winning prize amounts in this play area.

S. Game TWO OF A KIND: Players can win twice in this area.

T. Game TWO OF A KIND: Tickets will win with two matching CARDS within the same HAND.

U. Game TWO OF A KIND: On non-winning tickets, all CARDS will be unique.

V. Game TWO OF A KIND: On winning tickets, all non-winning prize amounts will be different from winning prize amounts in this play area.

W. Game TWO OF A KIND: On non-winning games, the two prize amounts will be unique.

2.3 Procedure for Claiming Prizes.

A. To claim a "CLUB CASINO" Instant Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CLUB CASINO" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas

Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CLUB CASINO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CLUB CASINO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CLUB CASINO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 668. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 668 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	672,000	7.50
$10	537,600	9.38
$20	100,800	50.00
$50	81,396	61.92
$100	10,500	480.00
$500	1,512	3,333.33
$1,000	252	20,000.00
$5,000	10	504,000.00
$50,000	4	1,260,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 668 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 668, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200603488

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 28, 2006

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Instant Game Number 685 "Lucky Millions"

1.0 Name and Style of Game.

A. The name of Instant Game No. 685 is "LUCKY MILLIONS". The play style for Game 1, is "key number match". The play style for Game 2 is "beat score". The play style for Game 3 is "beat score". The play style for Game 4 is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 685 shall be $30.00 per ticket.

1.2 Definitions in Instant Game No. 685.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 GOLD BAR SYMBOL, COIN SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, $ SYMBOL, HORSESHOE SYMBOL, BOOT SYMBOL, HAT SYMBOL, SADDLE SYMBOL, SPUR SYMBOL, HORSE SYMBOL, STAR SYMBOL, $1.00, $2.00, $3.00, $4.00, $5.00, $8.00, $10.00, $20.00, $30.00, $40.00, $50.00, $100, $300, $500, $3,000, $30,000 or THR MILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 685 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
GOLD BAR SYMBOL	GOLD
COIN SYMBOL	COIN
MONEY BAG SYMBOL	$BAG
STACK OF BILLS SYMBOL	BILLS
$ SYMBOL	MONEY
HORSESHOE SYMBOL	SHOE
BOOT SYMBOL	BOOT
HAT SYMBOL	HAT
SADDLE SYMBOL	SADDLE
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$

$5.00	FIVE$
$8.00	EIGHT$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$300	THR HUND
$500	FIV HUND
$3,000	THR THOU
$30,000	30 THOU
$THR MILL SYMBOL	THR MIL

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Mid-Tier Prize - A prize of $30.00, $40.00, $70.00, $100, $300 or $500.

H. High-Tier Prize - A prize of $3,000, $30,000 or $3,000,000.

I. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (685), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 685-0000001-001.

K. Pack - A pack of "LUCKY MILLIONS" Instant Game tickets contains 25 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY MILLIONS" Instant Game No. 685 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY MILLIONS" Instant Game is determined once the latex on the ticket is scratched off to expose 62 (sixty-two) Play Symbols. GAME 1: If a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins the prize shown for that number. GAME 2: If the total of YOUR NUMBERS play symbols equals 7 or 11 within a row, the player wins PRIZE shown for that row. GAME 3: If YOUR NUMBER play symbol beats THEIR NUMBER play symbol within a row, the player wins PRIZE shown for that row. GAME 4: If a player matches three (3) symbols across in the same row, the player wins the PRIZE shown for that row. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 62 (sixty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 62 (sixty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 62 (sixty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 62 (sixty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No duplicate non-winning prize symbols.

C. Game 1: No duplicate non-winning YOUR NUMBERS play symbols.

D. Game 1: No duplicate WINNING NUMBERS play symbols.

E. Game 1: Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. Game 1: No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and $5).

G. Game 2: No duplicate non-winning rows in the same order.

H. Game 2: No duplicate non-winning prize symbols.

I. Game 2: Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. Game 3: No duplicate non-winning rows.

K. Game 3: No duplicate non-winning prize symbols.

L. Game 3: Non-winning prize symbols will never be the same as the winning prize symbol(s).

M. Game 3: No ties between YOUR NUMBER and THEIR NUMBER within a row.

N. Game 4: No duplicate non-winning rows in any order.

O. Game 4: No duplicate non-winning prize symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY MILLIONS" Instant Game prize of $30.00, $40.00, $70.00, $100, $300 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $40.00, $70.00, $100, $300 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY MILLIONS" Instant Game prize of $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "LUCKY MILLIONS" Instant Game prize of $3,000,000, the claimant must sign the winning ticket and present it at the Texas Lottery Commission Claim Center. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "LUCKY MILLIONS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY MILLIONS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY MILLIONS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 685. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 685 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$30	1,142,400	3.57
$40	326,400	12.50
$70	244,800	16.67
$100	81,600	50.00
$300	4,930	827.59
$500	2,210	1,846.15
$3,000	170	24,000.00
$30,000	34	120,000.00
$3,000,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 2.26. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 685 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 685, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200603411
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 21, 2006

♦ ♦ ♦

Texas Public Finance Authority

Request for Proposals for Arbitrage Compliance Services

The Texas Public Finance Authority (the "Authority") is requesting proposals for arbitrage compliance services. The deadline for proposal submission is 5:00 p.m., July 28, 2006.

The Board will make its selection based upon demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fee for the services to be rendered. By the Request for Proposal, however, the Board has not committed itself to employ an arbitrage compliance consultant. The Authority reserves the right to negotiate Individual elements of the firm's proposal and to reject any and all proposals.

Copies of the Request for Proposal may be obtained by calling or writing the Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544, attention Paula Hatfield, or E-mail paula.hatfield@tpfa.state.tx.us.

TRD-200603430
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Filed: June 23, 2006

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Public Utility Commission of Texas

Announcement of Amendment to Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 19, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001-66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Texas and Kansas City Cable Partners, L.P. d/b/a Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 32845 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32845.

TRD-200603431

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 23, 2006

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Announcement of Amendment to Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 21, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001-66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Texas and Kansas City Cable Partners, L.P. d/b/a Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 32852 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32852.

TRD-200603438
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2006

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on June 16, 2006, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary in Rockwall County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries of its Royse City and Rockwall Exchanges. Docket Number 32836.

The Application: The minor boundary amendment is being filed to realign the boundary between AT&T Texas's Royse City and Rockwall exchanges. The proposed boundary amendment will transfer a small area from the Rockwall exchange to the Royse City exchange to accurately reflect the way service is being provisioned in the Westview subdivision.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by July 14, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32836.

TRD-200603440
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2006

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 19, 2006, Capital Telecommunications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60020. Applicant intends to reflect a change in ownership/control to StarVox Communications, Inc.

The Application: Application of Capital Telecommunications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32843.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 12, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32843.

TRD-200603439
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2006

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Notice of Application to Amend Certificated Service Area Boundaries in Wheeler County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on June 21, 2006, for a service area exception to amend certificated service area boundaries within Wheeler County, Texas.

Docket Style and Number: Application of Greenbelt Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for Service Area Exception within Wheeler County. Docket Number 32850.

The Application: Greenbelt Electric Cooperative, Inc. seeks to provide service to a specific customer located within the certificated service area of Southwestern Public Service (SPS). SPS is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 14, 2006 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32850.

TRD-200603441
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 2006

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Texas Council on Purchasing from People with Disabilities

Request for Comment Regarding the Management Fee

Rate Charged by TIBH Industries Inc. (Central Nonprofit Agency)

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) will review and approve the manage-

ment fee rate charged by the central nonprofit agency, TIBH Industries Inc., for its services to the community rehabilitation programs (CRPs) for Fiscal Year 2007 as required by §122.019(e) of the Texas Human Resources Code. This review will be conducted at the Council's meeting on Friday, September 22, 2006. The Council's meeting will be held at Fort Worth Lighthouse for the Blind, 912 West Broadway, Fort Worth, Texas. TIBH Industries Inc. has requested that the Council set the management fee rate at 6.25% of the sales price for products and 6% of the contract price for services. The Council seeks public comment on TIBH Industries Inc. management fee rate request as required by §122.030(a) - (b) of the Texas Human Resources Code.

Comments should be submitted in writing on or before Friday, September 8, 2006 to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 1711 San Jacinto Blvd., Austin, Texas 78711.

For all other questions or comments, contact the Texas Council on Purchasing from People with Disabilities at (512) 436-3244. In addition, hearing and speech-impaired individuals with text telephones (TTY) may also contact the Council on Purchasing from People with Disabilities at (512) 463-3244.

TRD-200603491
John W. Luna
Chairman
Texas Council on Purchasing from People with Disabilities
Filed: June 28, 2006

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Request for Comment Regarding the Services Performed by TIBH Industries Inc.

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) intends to review the services provided by the central nonprofit agency, TIBH Industries Inc., for Fiscal Year 2006 as required by §122.019(c) of the Texas Human Resources Code. This review will be considered at the next Council meeting on Friday, September 22, 2006. The Council's meeting will be held at Fort Worth Lighthouse for the Blind, 912 West Broadway, Fort Worth, Texas. The Council requests that interested parties submit comments regarding the services of TIBH Industries Inc. in its operation of the State Use Program, under §122.019 (a) - (b) of the Texas Human Resources Code.

Comments should be submitted in writing on or before Friday, September 8, 2006 to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 1711 San Jacinto Blvd., Austin, Texas 78711.

For all other questions or comments, contact the Texas Council on Purchasing from People with Disabilities at (512) 436-3244. In addition, hearing and speech-impaired individuals with text telephones (TTY) may also contact the Council on Purchasing from People with Disabilities at (512) 463-3244.

TRD-200603490
John W. Luna
Chairman
Texas Council on Purchasing from People with Disabilities
Filed: June 28, 2006

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Texas Residential Construction Commission

Notice of Applications for Designation as a "Texas Star Builder"

The Texas Residential Construction Commission (commission) adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective September 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

Section §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience, and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Mack Professionals, Inc., dba Beaver Builders, 2970 FM 455, Suite 1, Sanger, Texas 76266. Mack Professionals, Inc., dba Beaver Builders holds TRCC builder registration #1545. The applicant's registered agent is Donald Mack.

Homes by Hanes, Inc., 711 Ferris Avenue, Suite 101, Waxahatchie, Texas, 75165. Homes by Hanes, Inc., holds TRCC builder registration #1325. The applicant's registered agent is Gaylord Hanes.

CC Williams Construction Co., 1200 West Park Drive, Livingston, Texas, 77351. CC Williams Construction Co. holds TRCC builder registration # 8640. The applicant's registered agent is Cathie Williams.

Affordable Housing of Parker County, 101 Swan Court, Springtown, TX 76082. Affordable Housing of Parker County holds TRCC builder registration # 9091. The applicant's agent is A. G. Swan.

Lashante Enterprises, Inc., 2507 Cornerstone Boulevard, Edinburg, TX, 78539. Lashante Enterprises, Inc. hold TRCC builder registration # 2420. The applicant's registered agent is Alok Maheshwari.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P. O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200603470
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: June 28, 2006

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Lamesa and Dawson County, through their agent the Texas Department of Transportation (TxDOT), intend to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Lamesa and Dawson County, Lamesa Municipal Airport. TxDOT CSJ No.:0605LAMES. Scope: Provide engi-

neering/design services to rehabilitation and mark taxiways B, C, D, E, and F, overlay and mark taxiway A, replace medium intensity runway lights, runway 16-34, rehabilitation and mark runway 16-34, rehabilitation and mark runway 7-25, rehabilitation apron and rehabilitation and mark hangar access taxiway.

The DBE goal is set at **9%**. TxDOT Project Manager is Bijan Jamalabad, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Lamesa Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/forms/aviation/550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **Monday, July 31, 2006, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Bijan Jamalabad, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200603426
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 23, 2006

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Texas A&M University, Board of Regents

Request for Proposal

RFP MAIN 06-0023

Texas A&M University seeks proposals from interested firms to assist the University in conducting negotiations for Air Carrier Use and Lease agreements for Easterwood Airport, an airport owned and operated by Texas A&M University, and assist in the annual recalculation and negotiation of air carrier rates and charges with the ongoing support of the Passenger Facility Charge Program (PFC).

The ongoing support of the PFC Program shall include the following:

Amend PFC application #4

Prepare application for PFC #5

Information may be obtained by contacting:

Debi Maeger, C.P.M.

Financial Management Supervisor

Department of Purchasing Services

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-0013

or e-mail at d-maeger@tamu.edu

Selection criteria will include overall experience with airport contract negotiations/methodology, references, qualifications, and reasonableness of price. Proposals must be received on or before 2:00 p.m. central time on July 25, 2006.

TRD-200603446
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: June 26, 2006

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Texas Workforce Commission

Notice of Available Funds for Fiscal Year 2007 (FY'07) for Apprenticeship Training Programs from the Texas Workforce Commission under the Texas Education Code, Chapter 133

Filing Authority. The notice of available funds for apprenticeship training programs is authorized under the Texas Education Code, Chapter 133.

Eligible Applicants. The Texas Workforce Commission (Commission) is requesting preliminary contact-hour estimates from public school districts and state postsecondary institutions for related (apprentice) instruction classes for apprenticeship training programs under Texas Education Code, Chapter 133.

Description. Funds will be available for FY'07 (September 1, 2006-August 31, 2007) to provide funds under the Texas Education Code, Chapter 133. The purpose of the funds is to help pay for classroom instruction for related (apprentice) instruction classes of apprenticeship training programs registered with the U.S. Department of Labor, Office of Apprenticeship. The planning estimate for FY'07 is $1,628,292 for total apprenticeship program funds from the Commission contingent upon the Commission's adoption of the FY'07 Operating Budget. Five percent of the total grant funds will be set aside for apprenticeship training programs and occupations within apprenticeship programs that did not receive Chapter 133 funds during Fiscal Year 2006.

Qualifications for Funding. To qualify for funding:

1. each apprenticeship training program or occupation within a program must be certified and registered by the Office of Apprenticeship, no later than August 1, 2006;

2. each apprentice must be registered with the Office of Apprenticeship in Texas before attending the first class;

3. each apprentice must be a full-time paid employee in the private sector in Texas;

4. the number of related instruction hours per class must be certified by the Office of Apprenticeship as verified in the program standards of the apprenticeship program;

5. a public school district or state postsecondary institution must act as fiscal agent for the funds in accordance with a contract between the apprenticeship program sponsor and the district or institution; and

6. the related instruction (apprentice) class must start no earlier than September 1, 2006.

Dates of Program. Each class may not start before September 1, 2006, and must end on or before August 31, 2007.

Planning Distribution of Funds. The statewide total number of estimated contact hours that are submitted to the Commission will be divided into the amount of funds available to determine a preliminary contact-hour rate, not to exceed $4.00 per contact hour. The contact-hour rate for the prior three fiscal years was $2.86-FY'04; $2.88-FY'05; and $2.638-FY'06. Planning distributions are made to eligible applicants based on the preliminary contact-hour rate multiplied by the number of estimated contact hours submitted to the Commission.

Use of Funds. Funds can be used only for related instruction costs such as instructor salaries, instructional supplies, instructional equipment, and other operating expenses. No more than 15 percent may be used by the eligible applicants for administrative purposes, such as supervisory and/or secretarial salaries, office supplies, or travel.

Requesting the Forms to Submit Preliminary Estimated Contact Hours. An information package explaining the process for submitting preliminary contact-hour estimates and the process for submitting an application may be obtained by contacting the Commission's Apprenticeship Support Program at 101 East 15th Street, Room 440T, Austin, Texas 78778-0001; by phone at (512) 936-3059; or by e-mail at apprenticeship@twc.state.tx.us. For additional information, please contact Desi Holmes at (512) 936-3059.

Deadline for Receipt of Preliminary Contact-Hour Estimates. To be considered for funding, the Commission's Apprenticeship Support Program must receive preliminary contact-hour estimates for FY'07 apprenticeship training programs no later than 5:00 p.m., Friday, July 14, 2006.

TRD-200603427
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Filed: June 23, 2006

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).